

343-24  
OAL Dkt. No. EDU 08877-21  
Agency Dkt. No. 173-9/21

**New Jersey Commissioner of Education**  
**Final Decision**

Board of Education of the Lower Cape May  
Regional High School District, Cape May County,

Petitioner,

v.

New Jersey Department of Education, Office of  
School Finance,

Respondent.

The record of this matter, the Initial Decisions of the Office of Administrative Law (OAL) issued January 30, 2023, and August 5, 2024, the exceptions filed by petitioner, Board of Education of the Lower Cape May Regional High School District (Board) pursuant to *N.J.A.C. 1:1-18.4*, and the reply thereto filed by the New Jersey Department of Education, Office of School Finance (OSF) have been reviewed and considered.

At issue is the Board's challenge to OSF's March 31, 2020, and December 31, 2020, determinations that the Lower Cape May Regional High School District was the district of residence for then minor child K.C. for the 2019-2020 and 2020-2021 school years and was therefore financially responsible for K.C.'s education when K.C. was placed at residential State facilities or group homes during those years.

K.C. is the child of J.C., biological father, and C.B., biological mother. According to the record, K.C. lived with her maternal grandmother, L.T., in Lower Cape May until February 2019. It is not known from the record whether L.T. ever obtained legal custody of K.C., as there are no court orders in the record to indicate same, and L.T. did not participate in the proceedings at the OAL. It is also not known from the record where K.C.'s parents were residing in February 2019.

In February 2019, the Department of Children and Families (DCF), Division of Child Protection and Permanency (DCPP) placed K.C. in a residential placement. It is not known from the record whether the Superior Court of New Jersey initially awarded legal custody of K.C. to DCPP in February 2019 when she was placed in a residential facility, or at some point thereafter. But as of October 2, 2019, according to a court order in the record filed under docket number FN-05-89-12, the Superior Court of New Jersey, Chancery Division, Cape May County, continued custody, care and supervision of K.C. with DCPP.<sup>1</sup>

On October 21, 2019, the Superior Court transferred legal custody of K.C. from DCPP to K.C.'s father, J.C., but continued physical custody with K.C.'s current placement, Spring House/Legacy Treatment Home. This court order indicates that J.C. was living in Sussex County at that time. On or about December 5, 2019, J.C. enrolled K.C. at High Point Regional High School in Sussex, New Jersey. However, the apparent plan to discharge K.C. to J.C.'s home fell through, as he subsequently told DCPP that he was not willing to care for K.C. Consequently, on December 11, 2019, the Superior Court awarded legal custody to DCPP once again, and K.C. was

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<sup>1</sup> "FN" child protection proceedings in Superior Court are initiated by DCPP's filing of a verified complaint and order to show cause for custody, care and supervision or care and supervision of the subject child or children. *See, e.g., N.J. Div. of Youth & Fam. Servs. v. W.F.*, 434 N.J. Super. 288, 291 (App. Div. 2014). Because the record in this matter does not contain the verified complaint or order to show cause, it is not known when the litigation commenced, or when DCPP was first awarded custody of K.C.

placed at Legacy Treatment Services. K.C. remained at said placement until July 21, 2020, when DCPD placed her at East Mountain Youth Lodge/Carrier Clinic. She attended school there from September 6, 2020, until April 19, 2021.

When children are placed in residential State facilities or group homes by agencies such as DCF, “local school districts remain financially responsible for their educational services” pursuant to the State Facilities Education Act of 1979, *N.J.S.A. 18A:7B-1 to -13* (the Act). *Bd. of Educ. of Borough of Highland Park v. N.J. Dep’t of Educ.*, OAL Dkt. No. EDU 13316-14, Initial Decision at 10 (Nov. 30, 2015), *adopted*, Commissioner Decision No. 14-16 (Jan. 15, 2016). Accordingly, the Act provides that “[f]or each State-placed child who is resident in a district and in a State facility on the last school day prior to October 16 of the prebudget year, and for each district-placed child who is resident in a district and in a State facility on the last school day prior to October 16 of the budget year, the Commissioner of Education shall deduct from the State aid payable to that district an amount equal to the approved per pupil cost established pursuant to [N.J.S.A. 18A:7F-24].” *N.J.S.A. 18A:7B-2*.

To determine where financial responsibility rests, the Commissioner is responsible for identifying the district of residence for children in residential placements pursuant to the Act, which states that “[t]he district of residence for children who are in residential State facilities, or who have been placed by State agencies in group homes . . . shall be the present district of residence of the parent or guardian with whom the child lived prior to h[er] most recent

admission to a State facility or most recent placement by a State agency.”<sup>2</sup> *N.J.S.A. 18A:7B-12(b)*. The Act further provides that “[i]f the district of residence cannot be determined according to the criteria contained herein . . . the State shall assume fiscal responsibility for the tuition of the child.” *N.J.S.A. 18A:7B-12(d)*. See, e.g., *Bd. of Educ. of Borough of Buena v. N.J. Dep’t of Educ.*, 96 *N.J.A.R.2d* (EDU) 288 (1995) (holding that the child’s district of residence could not be determined when adoptive parents surrendered their parental rights and were no longer child’s parents or guardians as a matter of law).

“Residence” as utilized within Title 18A “means domicile, unless a temporary residence is indicated.” *N.J.S.A. 18A:1-1*. “[T]he domicile of the child follows that of the parent or guardian having legal custody over him or her.” *L.D.M. v. Bd. of Educ. of Twp. of W. Orange*, Commissioner Decision No. 151-01, at 3 (2001). See also *Mansfield Twp. Bd. of Educ. v. State Bd. of Educ.*, 101 *N.J.L.* 474, 479 (Sup. Ct. 1925) (holding that persons other than parents having “legal control” over children are “those to whose care and custody children are committed by operation of law” and “have the legal status of parent or guardian”). “For purposes of determining domicile and

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<sup>2</sup> The related regulations offer additional guidance, including that “[t]he ‘present district of residence’ of a child in a residential State facility, defined in *N.J.S.A. 18A:7F-45* . . . means the New Jersey district of residence of the child’s parent(s) or guardian(s) as of the last school day prior to October 16.” *N.J.A.C. 6A:23A-19.2(a)(1)*. “The ‘present district of residence’ of a child placed by a State agency in a group home . . . means the New Jersey District of residence of the child’s parent(s) or guardian(s) as of the date of the child’s most recent placement by the State agency.” *N.J.A.C. 6A:23A-19.2(a)(2)*. “In subsequent school years spent in the educational placement made by a State agency, the child’s ‘present district of residence’ shall be determined in the same manner as for a child in a residential State facility as set forth in (a)1 above.” *Ibid.* “If the State becomes the child’s legal guardian after the date of the child’s initial placement by a State agency, the State will assume financial responsibility for the child’s education costs in subsequent school years.” *N.J.A.C. 6A:23A-19.2(a)(3)*.

entitlement to a public education, the Commissioner can find no distinction in the case law between ‘guardianship’ and ‘custody.’” *V.S.-L. v. Bd. of Educ. of City of Garfield*, Commissioner Decision No. 281-07, at 8 (July 9, 2007). Both terms “clearly signify positions of authority created to allow legal control of another human being who, because of age, physical or mental condition, cannot take responsibility for him or herself.” *Ibid*.

Based upon information received from DCF that K.C. had lived with L.T., a resident of Lower Cape May, since August 2014, and immediately prior to her placement at a residential facility by DCPD in February 2019, OSF determined that the Lower Cape May Regional High School District was K.C.’s district of residence for the 2019-2020 and 2020-2021 school years.<sup>3</sup> Following receipt of the Board’s petition of appeal, the Office of Controversies and Disputes transmitted the matter to the OAL. Ultimately, following an extended period of motion practice and discovery, the Administrative Law Judge (ALJ) granted OSF’s motions for summary decision upon concluding that Lower Cape May Regional High School District was K.C.’s district of residence for both the 2019-2020 and 2020-2021 school years.

Specifically, the ALJ found and concluded that Lower Cape May Regional High School District was K.C.’s district of residence for the 2019-2020 school year because “[i]t is undisputed that K.C. resided with her grandmother prior to her placement at a State residential facility in

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<sup>3</sup> When identifying the proper district of residence pursuant to *N.J.S.A. 18A:7B-12(b)*, the Commissioner is permitted to rely upon “the address submitted by . . . the Department of Children and Families . . . on forms prepared by the Department of Education” and need not conduct his own investigation. *N.J.A.C. 6A:23A-19.2(b)*. However, a board of education may contest OSF’s district of residence determination and provide additional information for OSF to consider. *N.J.A.C. 6A:23A-19.2*. If OSF declines to issue a redetermination, a board of education may commence proceedings before the Commissioner and “bears the burden of proving that the . . . [district of residence] determination was arbitrary, capricious or without reason.” *Bd. of Educ. of Twp. of Delaware v. N.J. Dep’t of Educ.*, Commissioner Decision No. 177-06S, at 12 (May 10, 2006).

February 2019. Respondent correctly states that on October 15, 2019, L.T., K.C.'s grandmother had legal custody of K.C. who resided within the boundaries of the petitioner's school district." January 30, 2023, Initial Decision at 8. Regarding the 2020-2021 school year, the ALJ likewise concluded that Lower Cape May Regional High School District was K.C.'s district of residence "because K.C. resided with her grandmother prior to placement by the DCF." August 5, 2024, Initial Decision, at 12.

In their exceptions, the Board contends that the ALJ incorrectly assumed that L.T. was K.C.'s legal guardian absent a court order indicating same, and erroneously conflated physical custody with legal custody. In its reply exceptions, OSF maintains that L.T. did have legal custody of K.C. and claims that a court order from August 2014 transferring legal custody of K.C. to L.T. in fact exists, although said order was not part of the record before the ALJ. Reply Exceptions, at 16.

Absent a court order or credible testimony from L.T., the ALJ's finding that L.T. had legal custody of K.C. prior to her February 2019 placement by DCPD is unsupported by the record. Even if L.T. assumed physical custody of K.C. at some point prior to February 2019, that fact does not automatically make L.T. the legal guardian or legal custodian of K.C. without a court order. For purposes of identifying K.C.'s district of residence for the 2019-2020 and 2020-2021 school years, it is critical to know who had legal custody of K.C. during those years. Consequently, the Commissioner has determined that a remand to the OAL is necessary to determine whether L.T., at any point in time, obtained legal custody of K.C. via a court order. *See L.D.M., at 3* ("[T]he domicile of the child follows that of the parent or guardian having legal custody over him or her.") (emphasis added).

Accordingly, this matter is remanded to the OAL for further proceedings consistent with this decision. Upon remand, all custody orders involving K.C. should be entered into the record, so that the ALJ may make findings of fact as to when L.T. obtained legal custody of K.C., and when DCPD obtained legal custody of K.C.

IT IS SO ORDERED.<sup>4</sup>



ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 17, 2024  
Date of Mailing: September 18, 2024

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



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

**INITIAL DECISION SUMMARY**

**DECISION**

OAL DKT. NO. EDU 08877-21

AGENCY DKT. NO. 173-9/21

**LOWER CAPE MAY REGIONAL  
HIGH SCHOOL DISTRICT, BOARD  
OF EDUCATION, CAPE MAY COUNTY,**

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF EDUCATION,  
OFFICE OF SCHOOL FINANCE,**

Respondent.

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**Brett E. J. Gorman, Esq.**, appearing for petitioner (Parker McCay, P.A., attorneys)

**Sadia Ahsanuddin**, Deputy Attorney General, appearing for respondent (Matthew J. Platkin, Attorney General of New Jersey)

Record closed: May 31, 2024

Decided: August 5, 2024

BEFORE **KIM C. BELIN**, ALJ:



## **STATEMENT OF THE CASE**

The Board of Education of the Lower Cape May Regional High School District, Cape May County (petitioner/Board) challenges the determination of the New Jersey Department of Education, Office of School Finance (respondent/OSF) that the petitioner is the district of residence of the minor child, K.C., for the 2019–20 and 2020–21 school years and thus is responsible for her educational costs during those school years.

## **PROCEDURAL HISTORY**

On March 31, 2020, the OSF determined that the petitioner was the responsible school district for K.C.'s educational costs for the 2019–20 school year. On September 10, 2021, the petitioner filed a Petition of Appeal,<sup>1</sup> and the matter was transmitted as a contested case to the Office of Administrative Law (OAL), where it was filed on October 27, 2021. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On October 25, 2021, respondent filed a motion to dismiss in lieu of an answer. N.J.A.C. 6A:3-1.5(g). Petitioner submitted a response on November 4, 2021, and on February 2, 2022, the Hon. Jeffrey R. Wilson denied the motion. On or about August 11, 2022, Judge Wilson was appointed to the Superior Court of New Jersey, and the case was reassigned to the undersigned.

On August 22, 2022, the respondent filed a motion for partial summary decision, and the petitioner filed a motion for summary decision. On September 16, 2022, the East Mountain School (EMS) filed a motion to intervene. On September 20, 2022, the petitioner filed its opposition to respondent's motion for partial summary decision, and the respondent filed its opposition to the petitioner's motion for summary decision.

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<sup>1</sup> N.J.A.C. 6A:23-19.2(d) mandates that appeals must be filed within thirty days of the final notice that a child was determined to be a resident of the district. The petitioner's appeal was filed beyond the thirty-day requirement because it relied upon the OSF's advice not to file an appeal because J.C. had assumed custody and transferred K.C. to another school district. (PMSD, Exhibit 13, DOE 11.)

On September 27, 2022,<sup>2</sup> the petitioner filed its opposition to the EMS's motion to intervene. The respondent did not submit a response to the motion to intervene. The respondent was granted a one-week extension to file its reply brief, which was submitted on October 4, 2022.

On October 27, 2022, the undersigned denied EMS's motion to intervene but granted EMS participation status. Oral argument on the motions for summary decision and partial summary decision was held on December 19, 2022. On January 30, 2023, the undersigned denied the petitioner's motion for summary decision and granted the respondent's motion for partial summary decision, finding that the petitioner was the district of residence for the 2019–20 school year. However, there remained an issue of material fact regarding K.C.'s residence after July 1, 2020, for the 2020–21 school year.

On April 19, 2023, the undersigned signed a protective order for an in-camera review of K.C.'s records from the Division of Children and Families (DCF). The parties obtained the records from the DCF regarding K.C.'s residency after July 1, 2020. Based on that previously undisclosed discovery, the parties filed cross-motions for summary decision on April 9, 2024. The parties were granted extensions to submit their oppositions and replies. The respondent filed its opposition and reply to the petitioner's motion for summary decision on May 20, 2024, and the petitioner filed its reply on May 31, 2024.

### **FACTUAL DISCUSSION AND FINDINGS**

The following **FACTS** are undisputed, and I therefore **FIND**:

1. K.C. was a minor child of J.C., her biological father, and C.B., her biological mother. C.B. did not have physical or legal custody of K.C. during the period relevant to this controversy.

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<sup>2</sup> Petitioner filed a letter dated September 30, 2022, opposing the motion to intervene and requesting the opportunity to submit a more detailed response. A letter brief dated September 27, 2022, was submitted.

2. K.C. was diagnosed with bipolar disorder, depression, post-traumatic stress disorder, anxiety, attention deficit hyperactivity disorder, self-injurious behavior and suicidal ideations. (Petitioner's Motion for Summary Decision (PMSD), Exhibit 10.)
3. In a letter dated December 31, 2020, the OSF determined that the petitioner was the district of residence for K.C. for the 2020–21 school year. (PMSD, Exhibit 2.)
4. K.C. resided with her maternal grandmother, L.T., in Lower Cape May until February 2019, when the Division of Children and Families (DCF) placed K.C. in a residential placement. (Id.)
5. In an Order dated October 2, 2019, the Hon. M. Susan Sheppard, P.J.F.P., continued physical custody with the DCF. The Order scheduled a discharge planning conference for October 9, 2019, to facilitate discharging K.C. to her father's custody upon consent of counsel. A compliance review was scheduled for October 21, 2019. (PMSD, Exhibit 3.)
6. On October 21, 2019, Judge Sheppard transferred legal custody of K.C. to her father, J.C., but continued physical custody with K.C.'s then current placement, Spring House/Legacy Treatment Home. L.T. was terminated from the litigation. A compliance review was scheduled for November 13, 2019. (PMSD, Exhibit 4.)
7. J.C. authorized the release of K.C.'s pupil records to High Point Regional High School on October 21, 2019. (Respondent's Opposing Brief, Exhibit A, P003-004.)
8. Physical and legal custody for K.C. remained unchanged at the compliance review held on November 13, 2019. Another compliance review was scheduled for December 11, 2019. (PMSD, Exhibit 5.)

9. According to the DCF Contact Sheet, Mariah Berger, the new DCF caseworker for K.C., wrote on December 2, 2019, that she contacted High Point Regional to inquire about the delay in enrolling K.C. On December 5, 2019, High Point Regional staff responded that J.C. came to the school on November 27, 2019, to complete the paperwork but was unable to do so because the school closed early; the school reopened on December 2, 2019, however, a severe snowstorm caused power outages, and the school was closed. The High Point Regional staff person stated that they were reviewing K.C.'s file and would reach out to J.C. and were also requesting pupil records from the petitioner. (PMSD, Exhibit 9.)
10. Mariah Berger also drafted summary notes stating that on December 5, 2019, she contacted J.C., who stated that there was no longer an option for K.C. to live with him and that Ms. Berger was no longer welcome in his home. (Id.)
11. On December 11, 2019, Judge Sheppard ordered physical custody to remain with DCF at Spring House "until successful completion of the program." The Order did not specify K.C.'s legal custody. (PMSD, Exhibit 6.) The Judge further ordered:

[T]he court is not currently requiring J.C. to comply with services based on his current position that he is not willing to care for K.C. and for other reasons stated on the record. Monmouth Regional School District, which covers Spring House, shall be considered the home school district for K.C. for school/homebound instruction purposes. The court determines that the removal of the child(ren) K.C. is necessary to avoid ongoing risk to the life, safety or health of the child(ren). Continuation of residence in the home would be contrary to the welfare of the child(ren) because J.C. strongly indicates that he is not willing to care for K.C. She cannot be maintained safely in his home. She has . . . health issues that need to be addressed in her current placement at Spring House and for the other reasons stated on the record and other due cause existing. (Ibid.)

12. On December 11, 2019, K.C. was placed at Legacy Treatment Services. (PMSD, Exhibit 8.)
13. In a letter dated December 11, 2019, DCP&P caseworker Mariah Berger and supervisor Cynthia Ginnetti notified J.C. that K.C. had been placed in an out-of-home placement and was in DCP&P's custody, and as such, K.C.'s new school placement was Monmouth Regional High School. J.C. was given five business days to challenge this placement. This letter listed Lower Cape May Regional School District as the "District of Residence" and Monmouth Regional School District as the "Resource Home District." The rationale given for this placement was:

The distance of the out of home placement to your child's present school – [K.C.] is placed in a Legacy Treatment Solutions Program located in Monmouth County, NJ. Monmouth Regional High School is the district that is closest in proximity to [K.C.]'s placement. (Ibid.)

14. Mss. Berger and Ginnetti sent separate letters to the Monmouth Regional School District and High Point Regional School District dated December 12, 2019, stating that K.C. was in DCP&P's custody at Spring House-Legacy Treatment Solutions and the new school placement was Monmouth Regional High School. In both letters, High Point Regional School District was listed as "District of Residence," and Monmouth Regional School District was listed as "Resource Home District." (Ibid.)
15. In separate letters dated January 22, 2020, caseworker Berger and supervisor Reneta Angelastro notified Monmouth Regional High School and Lower Cape May Regional High School that K.C. was in DCP&P's custody at Spring House-Legacy Treatment Services and was to be enrolled in the Monmouth Regional School District. In these letters, Lower Cape May Regional was listed as the "District of Residence," and Monmouth Regional School District was listed as the "Resource Home District." (Ibid.)

16. On or about January 2020, K.C. was transferred from Legacy Treatment to Bridgeton Intermediate;<sup>3</sup> however, K.C. signed herself out against medical advice. K.C. returned to Legacy Treatment. (PMSD, Exhibit 9.)
17. On or about July 2020, K.C. was discharged from Legacy Treatment and was a patient at the Monmouth Medical Center Adolescent Psychiatric Unit, where she remained until July 31, 2020. (Id.)
18. On July 31, 2020, K.C. was placed by DCF in East Mountain Youth Lodge at Carrier Clinic. (Respondent's Opposition to the Petitioner's MSD, Exhibit A at P020 and PMSD, Exhibit 12.)
19. On or about September 11, 2020, Ms. Ginnetti wrote in her summary that J.C. expressed a desire to terminate his parental rights. (PMSD, Exhibit 10.)
20. Mariah Berger noted in her summary dated September 17, 2020, that J.C. had been arrested on August 19, 2020, and remained incarcerated on new charges and for violating his parole. (Respondent's MSD, Exhibit E.)
21. In an email dated April 9, 2021, the OSE notified the petitioner that K.C. never resided with her father but remained in her out-of-district placement, and thus, K.C.'s grandmother was the last residence for K.C. prior to placement, making the petitioner responsible for K.C.'s educational costs. (Respondent's Opposition to Petitioner's MSD, P015-016.)
22. In an email dated May 20, 2021, the respondent stated that whether a child is registered in the family's school district is irrelevant in determining which school district is responsible for the child's educational costs. The controlling criteria for assigning financial responsibility for the child's education were where the child's parent/guardian resided on the date of the

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<sup>3</sup> Inspira Behavioral Health Child Inpatient Center Bridgeton.

child's placement and whether the placement was authorized by a State agency. (Respondent's Opposition to Petitioner's MSD, P024.)

23. K.C. became a resident of East Mountain Youth Lodge on July 31, 2020, and attended classes from September 6, 2020, until April 19, 2021.

### **LEGAL ANALYSIS AND CONCLUSIONS**

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact, and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact, which can only be determined in an evidentiary proceeding, to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must "consider whether competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536. I **CONCLUDE** that this matter is ripe for summary decision and that the respondent is entitled to judgment as a matter of law.

The petitioner herein challenges the respondent's determination that the petitioner is the district of residence responsible for K.C.'s educational costs for the 2020–21 school year pursuant to N.J.S.A. 18A:7B-12; N.J.A.C. 6A:23A-19.2; and N.J.A.C. 6A:23A-19.3(a)6. The petitioner contends that there is no factual dispute that the DCF, a State agency, became K.C.'s legal guardian on or about February 11, 2019. In addition, the petitioner asserts that this tribunal should reconsider its earlier decision dated January 30, 2023, finding the petitioner financially responsible for K.C.'s educational costs for the

2019–20 school year in light of new evidence released by the DCF because of a protective order. The petitioner contends that the new evidence affirms that K.C. did not reside with her grandmother, L.T., on October 15, 2019, and thus, the petitioner was not financially responsible for K.C.’s educational costs for the 2019–20 school year.

Conversely, the respondent herein contends that there is no factual dispute that Lower Cape May was the district of residence for the 2020–21 school year because the last place K.C. resided prior to her placement in a residential placement by DCF was with her grandmother, who lived within the boundaries of the Lower Cape May school district. The new evidence released by DCF revealed that K.C. never resided with her father but remained in the State’s physical custody despite the court order granting the father legal custody on October 21, 2019. Thus, the respondent contends that the petitioner is responsible for K.C.’s educational costs for the 2020–21 school year pursuant to N.J.A.C. 6A:23-19.2(a)1. In addition, the respondent asserts that it is improper for the petitioner to include a request for reconsideration of a prior Initial Decision within a summary decision motion. The respondent contends that the proper vehicle was to file for interlocutory review or a motion for reconsideration.

N.J.A.C. 6A:22-3.1(a)1 states 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.” Students placed in State residential facilities, however, are governed by N.J.S.A. 18A:7B-12, which is at the heart of this controversy and provides:

For school funding purposes, the Commissioner of Education shall determine district of residence as follows: . . .

- b. The district of residence for children who are in residential State facilities, or who have been placed by State agencies in group homes, skill development homes, private schools or out-of-State facilities, shall be the present district of residence of the parent or guardian with whom the child lived prior to his most recent admission to a State facility or most recent placement by a State agency.



Accordingly, the school district financially responsible for the educational costs of a child placed in a State facility is determined by the residence of the parent/guardian with whom the child last resided prior to the State placement. Corresponding regulations provide:

The district of residence for school funding purposes shall be determined according to the following criteria:

1. The “present district of residence” of a child in a residential State facility, defined in N.J.S.A. 18A:7F-45 and referred to in the first paragraph of N.J.S.A. 18A:7B-12.b, means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.
2. The “present district of residence” of a child placed by a State agency in a group home, skill development home, approved private school for students with disabilities or out-of-State facility, also referred to in N.J.S.A. 18A:7B-12.b means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's most recent placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's “present district of residence” shall be determined in the same manner as for a child in a residential State facility as set forth in (a)1 above.

[N.J.A.C. 6A:23A-19.2 (a)1 & 2.]

This regulation specifically identifies October 16 as the annual cutoff date because local school districts are required to file annual reports with the Commissioner of Education detailing pupil enrollment data, including, for example, the number of pupils enrolled by grade, the number of students receiving special education services, the number of pupils in state facilities, county vocational schools, and students receiving home instruction. N.J.S.A. 18A:7F-33. This data seeks “to correlate the ‘district of residence’ assignment of financial responsibility with an accurate determination of where a student is included, each academic year, for State-aid reporting purposes.” Bd. of Ed. of the Borough of Highland Park, v. N.J. Dept. of Ed., et al., 2015 N.J. AGEN LEXIS 578, \*13, (Nov. 30, 2015).

Thus, the critical question for this matter is where did K.C. reside on October 15, 2020? Based upon the factual record, it is undisputed that K.C. resided at East Mountain Youth Lodge, which is a residential treatment facility.<sup>4</sup> Accordingly, N.J.S.A. 18A:7B-12b mandates that the present district of residence of the parent or guardian with whom K.C. *lived* prior to her most recent admission to a State facility or most recent placement by a State agency is determinative.

The challenge here is that J.C. was given legal custody of K.C. on October 21, 2019, and subsequent court orders are silent regarding legal custody. Physical custody specifically continued with the State agency, the DCF. The plain reading of N.J.S.A. 18A:7B-12b mandates that the district of residence is where the student lived with the parent or guardian prior to admission to a State facility. The factual record affirms that K.C. never *lived* with her father but rather remained in various State facilities, and thus, the last place of domicile with a parent or guardian was with K.C.'s grandmother in Lower Cape May.

The petitioner contends, however, that not only did the DCF have physical custody, but the DCF was K.C.'s legal guardian because it is undisputed that the DCF had physical custody of K.C. since December 11, 2019. However, the petitioner failed to present evidence to support the claim that the DCF was indeed K.C.'s legal guardian. Guardianship is "established by the order of a court of competent jurisdiction," and parental rights must be terminated. N.J.S.A. 30:4C-2; N.J.S.A. 30:4C-15(c) and (f) (a petition to terminate parental rights must be filed "if it appears that the best interests of any child under the care or custody of the [DCF] require that [the child] be placed under guardianship.") The respondent correctly asserts that the petitioner failed to produce a court order awarding legal guardianship and/or a court order terminating parental rights.<sup>5</sup> Simply put, there are no indicia of legal guardianship by the DCF.

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<sup>4</sup> <https://www.hackensackmeridianhealth.org/en/locations/east-mountain-youth-lodge>

<sup>5</sup> Respondent submitted the certification of Mariah Eaves in support of its contention that no parental rights were terminated and thus the State never became K.C.'s legal guardian. However, this certification was not part of the original motion and therefore is rejected as evidence with probative value.

According to N.J.S.A. 18A:7B-12(d), the State will only assume financial responsibility for a child's educational costs if one of three situations exists, namely, if the district of residence cannot be determined, if the statutory criteria identifies a district of residence outside of the State, or if the child has resided in a domestic violence shelter, homeless shelter, or transitional living facility located outside of the district of residence for more than one year. None of these conditions apply in the present controversy. Moreover, following the petitioner's logic would result in the DCF being financially responsible for the educational costs of every student it placed in a State facility. There is no evidence to support such a far-reaching and potentially costly proposition. Accordingly, I **CONCLUDE** that there is insufficient proof that DCF assumed financial responsibility for K.C. for the 2020–21 school year. I further **CONCLUDE** that the petitioner was K.C.'s present district of residence for this school year because K.C. resided with her grandmother prior to placement by the DCF.

### **2019–20 School Year**

The petitioner asked this tribunal to reverse the decision dated January 30, 2023, because the new evidence revealed that the respondent was always K.C.'s legal guardian. (PMSD, at 7.) This request is denied for two reasons. First, the petitioner failed to provide evidence to substantiate that the State was the legal guardian, which is the basis for the request. N.J.S.A. 30:4C-11 grants the DCF the discretion to “accept and provide care or custody as the circumstances of the child may require” when “the safety or welfare of the child will be endangered unless proper care or custody is provided. . .” However, guardianship requires court action, which is not present in this case.

Second, the request is procedurally flawed. The Uniform Administrative Procedure Rules prohibit motions to reconsider an initial decision. N.J.A.C. 1:1-18.5(a). The only avenue to seek a change to the January 30, 2023, decision is for the petitioner to file a motion with the agency head to reopen the hearing pursuant to N.J.A.C. 1:1-18.5(b) or seek interlocutory review pursuant to N.J.A.C. 1:1-14.10. Accordingly, I **CONCLUDE** the Initial Decision dated January 30, 2023, will not be disturbed.

## **CONCLUSION**

The respondent's determination regarding "district of residence" is entitled to a presumption of correctness. Bd. of Educ. of South River v. Dept of Educ., 2002 NJ AGEN LEXIS 228 (April 12, 2000). When a local school board contests a district of residence determination made by the Department of Education, the local board bears the burden of proving that the determination was an error. Bd. of Educ. of Bradley Beach v. Dept of Educ., 2000 NJ AGEN LEXIS 938 (July 3, 2000). Having carefully reviewed the record, I **FIND** there are no material facts in dispute and that the respondent is entitled to prevail as a matter of law. The record reflects that there are no disputed issues of material fact remaining as to where K.C. resided after July 1, 2020, and who had custody of her after December 11, 2019. Viewing the facts of each motion as I must, in the light most favorable to the non-moving party, I **CONCLUDE** that there is no basis for the petitioner's claim that the respondent erred in determining that the petitioner was the district of residence for 2020–21; since there is no factual dispute sufficient to justify an evidentiary hearing, summary decision in favor of the respondent is appropriate.

## **ORDER**

I hereby **ORDER** that the petitioner's motion for summary decision is **DENIED**, and respondent's motion for summary decision is **GRANTED**. No other proceedings are required.

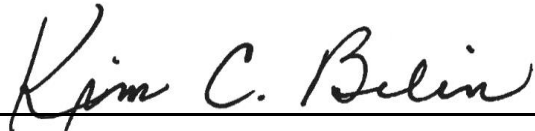
I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to **ControversiesDisputesFilings@doe.nj.gov** or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.

August 5, 2024

DATE

  
\_\_\_\_\_  
KIM C. BELIN, ALJ

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

KCB/am

## **APPENDIX**

### **EXHIBITS**

#### **For petitioner**

- Motion for Summary Decision with certification and exhibits, dated April 9, 2024
- Response Letter Brief in opposition to the respondent's Motion for Partial Summary Decision, dated May 13, 2024
- Reply Letter Brief in further support of the petitioner's Motion for Summary Decision, dated May 31, 2024

#### **For respondent**

- Motion for Summary Decision with certification and exhibits, dated April 9, 2024
- Response Letter Brief in opposition to the petitioner's Motion for Summary Decision, dated May 20, 2024
- Reply Letter Brief in further opposition to the petitioner's Motion for Summary Decision, dated May 20, 2024