

BOARD OF EDUCATION OF THE :
BOROUGH OF BOUND BROOK, :
SOMERSET COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

R.B., on behalf of minor child D.B., : DECISION
AND THE NEW JERSEY STATE :
DEPARTMENT OF EDUCATION, :

RESPONDENTS. :

SYNOPSIS

Petitioning Board challenged the Department's determination that the district of residence of R.B. – the mother of D.B., a minor who was placed in a residential facility – was Bound Brook, and that petitioner was therefore responsible for payment of D.B.'s educational program.

The ALJ found that the Department's determination that Bound Brook was the district of residence was not arbitrary, capricious, or unreasonable. He found the Department's witnesses to be more credible than petitioner's witnesses, and concluded that the evidence supported R.B.'s residency in Bound Brook.

The Commissioner concurred with the ALJ that the evidence supported R.B.'s residency/domicile in Bound Brook, and determined that it was consequently unnecessary to discuss allocation of burden of proof. The Initial Decision was adopted and petitioner was ordered to pay D.B.'s educational costs.

<p>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.</p>

OAL DKT. NO. EDU 2990-07
AGENCY DKT. NO. 107-4/07

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This case is a challenge by the Bound Brook Board of Education to the Department of Education’s determination that the “district of residence” of R.B. – the mother of D.B., a minor who has been placed in a residential facility – was Bound Brook on October 13, 2006, the date used to establish which school district or other entity is responsible for payment of the educational program for D.B. *N.J.A.C.* 6A:23-5.2(a)(1). The record, including the hearing transcripts and exhibits, and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have petitioner’s exceptions and the reply thereto by the respondent New Jersey State Department of Education (NJDOE), both duly filed pursuant to *N.J.A.C.* 1:1-18.4 and 1:1-18.8. The Commissioner adopts the Initial Decision as the final decision in this case, for the reasons articulated therein.

Petitioner’s exceptions, which challenge both the Administrative Law Judge’s (ALJ) factual findings and legal determinations, are without merit. Regarding the factual findings, petitioner contends that the ALJ erred in ignoring certain testimony by James Satterlee

– the owner of 566 Thompson Avenue, Bound Brook, where R.B.’s fiancée, Tony Abney, held an apartment – and a boilerplate affidavit of tenancy signed by Satterlee, which recited that R.B. and her children had never been residents of Abney’s apartment. Satterlee’s testimony, as well as testimony by Satterlee’s daughter, Traci – who lived in her father’s 566 Thompson Avenue building one floor below Abney’s apartment – allegedly established that R.B. did not reside in Bound Brook for the 2006-07 school year.

As the ALJ noted, however, Traci Satterlee testified that R.B. did live in her fiancée’s apartment at 566 Thompson from at least Thanksgiving of 2006. (3T33¹) Further, James Satterlee did not reside in Bound Brook during the 2006-2007 school year and only entered his tenants’ apartments once a year for inspection purposes. (3T14) The ALJ was required to weigh their testimony against the other evidence before her – including the testimony of DYFS caseworker Robert Field.

Field worked with R.B. and her children beginning in 2004. (2T8) On November 2, 2006, he signed a form stating that R.B.’s address on October 13, 2006 was 566 Thompson Avenue in Bound Brook. (Respondent’s Exhibit 2) On May 24, 2007, Field signed an affidavit stating that his first visit to R.B. at the 566 Thompson address had been in February 2006. (Respondent’s Exhibit 9) He confirmed this when he testified at the OAL hearing. (2T12) More specifically, Field explained that on February 22, 2006, he had walked through the apartment and observed signs that R.B. lived there: her clothes were hanging in the closet and many of her possessions were in the bedroom, such as DVDs. (2T14-15) He was shown an empty room to be used for R.B.’s children, and he subsequently purchased bunkbeds, which were delivered to the apartment.

¹ 1T = Transcript of February 27, 2008, hearing.
2T = Transcript of March 5, 2008, hearing.
3T = Transcript of May 15, 2008, hearing.

Field visited R.B. at 566 Thompson Avenue on several weekdays during the 2006-2007 school year – sometimes by prior arrangement and sometimes unannounced. (2T18; 2T26-27) Periodically he picked her up at 566 Thompson to take her to evaluations. (2T17) Sometimes he brought her children to her apartment on Fridays for their weekend visits and picked them up at the end of the weekend. (2T16) When he left paperwork for R.B. in the 566 Thompson mailbox she would contact him in response. (2T19) He also visited R.B. at the supermarket where she worked – a ShopRite that is two blocks from 566 Thompson Avenue. (2T23) As of the date of the hearing, March 5, 2008, R.B. still resided with Abney at the Thompson Avenue apartment. (2T12-13)

It is well settled that the Commissioner may not disturb the ALJ's credibility determinations, unless a review of the record reveals that the ALJ's findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. *N.J.S.A. 52:14B-10(c)*; *see, also D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 N.J. Super. 269, 273 (App. Div. 2004). After examining the record, the Commissioner finds no basis to disturb the ALJ's assessment that Field's credibility, along with the evidence presented at the OAL hearing, outweighed the testimony given by the Saterlees.

Similarly, there is no basis upon which to disturb the ALJ's credibility determination concerning attendance officer Gloria Imbriani. Imbriani had testified that R.B. had told her that she did not live at 566 Thompson. In evaluating Imbriani's testimony, the ALJ took into consideration the fact that Imbriani had never been to Abney's apartment to investigate

R.B.'s residency first hand – until 2007.² The ALJ also noted certain inconsistencies in Imbriani's testimony, such as conflicting statements about R.B.'s mailbox. This had to be compared with the other evidence in the record, such as Field's testimony.

Petitioner's legal arguments are also unpersuasive. It first argues that it need not pay the educational costs for D.B. unless R.B. was domiciled in, as opposed to in residence in, Bound Brook on October 13, 2006. The applicable statute, *N.J.S.A. 18A:7B-12(b)*, states that the district of residence for a child who has been placed by a state agency such as DYFS into a facility shall be the present district of residence of the parent or guardian with whom the child lived prior to the placement. However, petitioner argues that for purposes of this controversy the word "residence" should be replaced with the word "domicile" by virtue of regulation *N.J.A.C. 6A:22-3.1(a)* which states that students are entitled to a free education in the district in which they are domiciled – which domicile is determined by the permanent home of the parent or guardian with whom the child lives.

After discussing school law authority which articulates standards for determining domicile, petitioner inexplicably places its reliance on a case that defines domicile in the context of estate taxation: *Citizens Bank and Trust Co. v. Glaser*, 70 N.J. 72 (1976). The decedent in *Glaser* had homes in two states and the court was required to decide which abode had been her intended permanent home and which home she had intended to abandon. The controversy was fueled largely by the desire of the decedent's attorney-in-fact to avoid Virginia taxes.

In the present case no evidence has been offered that would indicate a second residence for R.B. *N.J.S.A. 18A:1-1* provides, "'Residence' means domicile, unless a temporary residence is indicated." The record supports respondent's determination that R.B.'s residence

² Assuming *arguendo* that R.B. told Imbriani she did not reside at 566 Thompson, the evidence nonetheless strongly suggests that R.B. did indeed live there. Petitioner could have subpoenaed and questioned R.B. if it felt that Imbriani's recollection was accurate.

and domicile has been 566 Thompson Avenue in Bound Brook since early 2006. *Glazer* is unhelpful to the adjudication of this matter.

Petitioner also suggests that, for purposes of the OAL hearing, the ALJ should have assigned to respondent the burden of proof regarding R.B.'s residency/domicile in Bound Brook. The Commissioner need not reach this issue, however, as she is satisfied that the record amply supports respondent's determination that D.B.'s mother/legal guardian lived in Bound Brook prior to October 13, 2006, and that petitioner is consequently responsible for D.B.'s educational costs.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 29, 2008

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³ * This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.