

M.K. and M.K., on behalf of minor child, M.K., :

PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BRIDGEWATER-RARITAN REGIONAL SCHOOL DISTRICT, SOMERSET COUNTY, :	:	DECISION
RESPONDENT.	:	

SYNOPSIS

Petitioners appealed the determination of the respondent Board that their son, M.K., was ineligible for a free public education in respondent's school district. Petitioners contended that they reside at an address within the Bridgewater-Raritan Regional school district. However, petitioners also asserted that M.K. – the mother of the minor child – frequently stays overnight at the home of her mother, the grandmother of the minor child, in South Bound Brook because the grandmother has chronic health conditions and requires assistance. The Board contended that a residency investigation revealed that petitioner M.K. and her son actually reside in South Bound Brook, which is outside of the respondent's school district. The Board filed a counterclaim seeking tuition for the period of M.K.'s ineligible attendance in the district.

The ALJ found, *inter alia*, that: the testimony of the respondent Board's residency investigator was credible and persuasive, while the testimony of the petitioners and their witnesses was inconsistent and lacked credibility; the Board completed a residency investigation in this matter during the 2015-2016 school year, the results of which indicated that although the petitioners claim to reside in Bridgewater, M.K. – the mother of minor child, M.K. – resides in South Bound Brook in order to care for her ailing mother; M.K. – the father of minor child, M.K. – had substance abuse issues, and was not able to care for his child during the period in question; and the minor child therefore was domiciled in South Bound Brook, with his mother, during the 2015-2016 school year. Accordingly, the ALJ concluded that M.K. was not entitled to a free public education under N.J.S.A. 18A:38-1, and that the Board is therefore entitled to be reimbursed for tuition by the petitioner in the amount of \$38,329.20 for the period of M.K.'s ineligible attendance.

The Commissioner adopted the Initial Decision as the final decision in this matter, for the reasons expressed therein. The petitioner was ordered to pay tuition in the amount of \$38,329.20 for M.K.'s ineligible enrollment in the District for the 2015-2016 school year.

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.

OAL DKT. NO. EDU 172-16
AGENCY DKT. NO. 363-12/15

M.K. and M.K., on behalf of minor child, M.K., :

PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BRIDGEWATER-RARITAN REGIONAL SCHOOL DISTRICT, SOMERSET COUNTY, :	:	DECISION
RESPONDENT.	:	

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

Upon such review, the Commissioner adopts the Initial Decision as the final decision for the reasons set forth therein. Accordingly, the petitioner shall pay the Board \$38,329.20 in tuition costs for M.K.'s ineligible enrollment in the District for the 2015-2016 school year.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 5, 2017

Date of Mailing: June 6, 2017

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 00172-16
AGENCY DKT. NO. 363-12/15

**M.K. AND M.K. ON BEHALF OF
MINOR CHILD, M.K.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE
BRIDGEWATER-RARITAN REGIONAL
SCHOOL DISTRICT, SOMERSET COUNTY,**

Respondent.

**Pasquale Marago, Esq., for petitioner (Law Offices of Pasquale Marago,
attorneys)**

**Stephen M. Bacigalupo II, Esq., for respondent (Schwartz, Simon, Edelstein &
Celso, L.L.C., attorneys)**

Record Closed: March 8, 2017

Decided: April 20, 2017

BEFORE DEAN J. BUONO, ALJ:

STATEMENT OF THE CASE

Petitioners M.K. and M.K., are the mother and father of the minor child, M.K., who are challenging the determination made by the Board of Education (Board) of the Bridgewater-Raritan Regional School District (District) that he did not reside in the District. The District filed a counterclaim seeking payment of tuition for the number of days that the minor child, M.K., attended school in the District.

PROCEDURAL HISTORY

On October 16, 2015, the District notified the petitioners that their son, M.K., was ineligible to attend the schools of the District due to non-residency. A hearing was held on November 2, 2015, and the committee recommended that the minor child, M.K., be removed from enrollment in the District. Petitioners appealed the decision. On December 23, 2015, the Department of Education transmitted the matter to the Office of Administrative Law (OAL) to be heard as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Throughout 2016, the parties made several attempts to exchange discovery. The difficulties in exchanging discovery required multiple conference calls with the court in an effort to resolve the conflicts. A hearing was held on January 4, 2017, but the record remained open for the parties to submit written closing summations. The record closed on March 8, 2017.

FACTUAL DISCUSSION

M.K. and M.K. are the parents of minor child, M.K. M.K. and M.K. married in 2005 and resided in his parents' basement in Bridgewater, Somerset County. D.K. is the maternal grandmother of the minor child, M.K., and resides in South Bound Brook, which is outside the District. For the 2015-2016 school year, M.K. was enrolled in second grade in the District. The Board completed a residency investigation and conducted a residency hearing on November 2, 2015. Respondent filed its notice of final determination of ineligibility on November 16, 2015, determining that M.K. does not reside in the District. As a consequence, the parents of minor child ,M.K., appealed the determination. The tuition

rate of reimbursement as filed with the State for the 2015-2016 school year was \$212.94 per day.

The preceding statements are not in dispute as they are from the records and testimony of the parties and are hereby **FOUND** as **FACT**.

TESTIMONY

For petitioner

M.K. is the mother of the minor child, M.K., who is an eight-year-old second grader at Milltown Primary School. She testified that she and her husband have lived on P. Street in Bridgewater, New Jersey since they started dating in 1995. The home is owned by her In-laws. In 2005, they were married and M.K. was born in 2008. They live in the basement which consists of one room, with a kitchen and bathroom. The basement was built and refinished in 2005.

The residence at South Bound Brook is owned by her mother. She testified that she stays at the South Bound Brook address to care for her mother because she has pulmonary edema. She alleges that in the middle of the night, at 3:00 a.m. or 4:00 a.m., the minor child, M.K., wakes up screaming, wanting his mother. She claims that it is a result of separation anxiety. As a result, M.K. is required to go to the Bridgewater address, pick him up and drive to the South Bound Brook address where they would leave to go to school. This happens four to five times a week. The child begins each night with dad and the in-laws in Bridgewater, and then after transport, spends only approximately two hours in South Bound Brook.

On cross-examination, she acknowledged that the answer to interrogatory number twenty-seven, indicates that the separation anxiety happens ten times in two months, not the four-five times per week as she testified. Also, a handwritten correspondence from her, dated October 5, 2015, never mentions the child being transported back-and-forth between residences. (R-5). Additionally, there is a storage

rental agreement, dated March 23, 2016, that has mother's address in South Bound Brook not Bridgewater. Finally, her Jeep SUV and a Black Mazda SUV are registered at the South Bound Brook address.

M.K. is the father of the minor child, M.K., and the husband of M.K. He testified that he has lived on P. Street in Bridgewater for forty-three years (his entire life.) He lives in the basement with his wife and child. His uncle finished the entire basement in 2005, so that the family would have a place to live.

He noted that he did not live in the house from June 17, 2015, through December 8, 2015, because of addiction and that he was involved in a court-ordered rehab. Before June 17, 2015, he had addiction "issues" and would not necessarily be home. However, he or his wife brought minor child, M.K., to school. On some occasions, his son would "freak out" at approximately 3:00 a.m. through 6:00 a.m. and his wife would be required to pick him up and transport him to the South Bound Brook address.

On cross-examination he was ordered by Drug Court to attend Integrity House, which is an aftercare drug treatment facility. He explained that he was not home before June 17, 2015, because of the drug addiction. He "was not there mentally or physically."

D.K. is the grandmother of the minor child, M.K. She has lived at the same address in Bridgewater for forty-five years with her husband. She explained that her son and daughter-in-law have lived in the basement since 1996. Sometimes the minor child, M.K., would leave to go to the South Bound Brook address in the middle of the night because he has anxiety for his mother. He would wake-up screaming "I need mommy."

On cross-examination, she testified that the minor child was never at the South Bound Brook residence and the anxiety incidents would occur fourteen to fifteen times a month.

J.K., Jr. is the grandfather of the minor child, M.K., and the husband of D.K. They reside in Bridgewater with their son, daughter-in-law and grandson. He explained that the minor child, M.K., is picked up from school in the afternoon by him, five days a week. Then he does homework and eats dinner and goes to bed in Bridgewater. "His mother would come to get him if there was a problem," but M.K. never goes to school from the South Bound Brook address.

For respondent

Walter Kalicki (Kalicki) has been with the District for eighteen years as the Attendance Officer. In September 2015, he received an anonymous email regarding the minor child, M.K., and his mother living in South Bound Brook. (R-1). As a result, he started a residency investigation on them for the South Bound Brook address. (R-2).

The investigation consisted of sixty occasions of surveillance. On thirty-five occasions, the mother and minor child were observed at the South Bound Brook address. On each of those occasions, the child was taken directly to the school in Bridgewater. Twelve occasions were during the summer (no school), seven occasions the child was absent from school and on three occasions he was late to school. On two occasions he was able to view a dismissal. On May 9, 2016 and May 10, 2016, the minor child, M.K., was picked-up by his mother and was observed being dropped off at South Bound Brook address. Two family vehicles, a Jeep SUV and a Black Mazda SUV are registered at the South Bound Brook address, not Bridgewater. It is his opinion that the student, M.K., was not domiciled in Bridgewater but at the residence in South Bound Brook.

He recalled an incident when he spoke to the mother of the minor child, M.K., on the phone and she said that she lived in Bridgewater with the family but then received the letter (R-5) which was contrary to her story. He also recalled another incident with the mother of the minor child, M.K., where he was seen during surveillance. He stated that the mother speedily changed lanes and got behind his vehicle and tailgated him for

a distance then honked and waved at him. She then proceeded to the Milltown School and dropped him off. It was obvious to him that she recognized him.

Finally, he indicated that the minor child, M.K., attended the entire school year (180 days) and the tuition rate for the 2015-2016 school year was \$212.94 per day.

On cross-examination, he conceded that residency is the domicile where the child puts his head down at night. In this case, he does not know where the child puts his head down at night. It is possible that the child slept at Bridgewater because his surveillance started at 7:00 a.m., so he does not know what happened before 7:00 a.m. Also, it was explained that vehicles are registered to M.K.'s mother and leased, so insurance required that the vehicles be registered at the South Bound Brook address.

FINDINGS OF FACT

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

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone

Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

After hearing the testimony and reviewing the evidence, I make the following findings of fact:

For the 2015-2016 school year, the minor child, M.K., was enrolled in second grade in the District. After receiving an anonymous complaint, the Board completed a residency investigation and conducted a residency hearing on November 2, 2015. The results of which were that the parents of the minor child, M.K., claimed to reside in Bridgewater, Somerset County. M.K., the mother of the minor child, M.K., resides in South Bound Brook which is outside the District. She resides at that location so that she may take care of her ailing mother. The father of the minor child had substance abuse issues and "was not there mentally or physically." As a result, the minor child, M.K., resided with his mother in the South Bound Brook residence because he had separation anxiety and the residence in South Bound Brook provided a more stable environment for the child. The tuition rate of reimbursement as filed with the State for the 2015-2016 school year was \$212.94 per day.

The testimony of respondent's witness was especially credible and persuasive. He did not embellish his investigative findings and in fact, conceded the point that it was possible that the child slept at Bridgewater because his surveillance started at 7:00 a.m., so he does not know what happened before 7:00 a.m.

Conversely, the petitioners' witnesses' testimony was not credible in the manner in which it was given. Their own testimony assisted the respondent in proving the facts of the case by a preponderance of the evidence. The witnesses failed to give a concise number of days in which the minor child would experience episodes of "separation anxiety". In fact they all testified to a different frequency and the inconsistency made the testimony by each, suspect.

A logical assembly of piecemeal facts, as testified to by the petitioners,

was that due to the father, M.K.'s substance abuse, the mother would keep the minor child with her at the South Bound Brook residence. The undersigned believes that the petitioners brought together the respondent's case quite well in establishing the real facts.

It was obvious that the petitioners attempted to "sell" their version of the facts to the undersigned. On several occasions, the individuals that had already testified were cautioned by the court to not "coach" a witness that was testifying on the witness stand. This detracted from any modicum of credibility.

Therefore, I **FIND** that the minor child, M.K., was domiciled outside the District in South Bound Brook. Accordingly, I **FIND** that M.K. became ineligible to attend school in the District for the 2015-2016 school year. I **FURTHER FIND**, by a preponderance of the credible evidence, that respondent filed a counterclaim seeking tuition for the days M.K. attended the District ineligible for the 2015-2016 school year. As such, the District must establish the cost of tuition and the number of days M.K. attended the District's schools when he was ineligible to do so. Testimony was uncontested and therefore, I **FIND** that the per-pupil cost for a student to attend school in the district for the 2015-2016 school year was \$212.94 per day equaling \$38,329.20 per annum.

CONCLUSIONS OF LAW

At issue is whether minor child, M.K., was entitled to a free education 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, in order for a student to receive a free education).

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. 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). A child's domicile is normally that of his or her parents. Ibid. 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, 119 S.Ct. 1357, 143 L. Ed. 2d 518 (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 parent has the burden of proof by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)(2).

The record reflects that the minor child, M.K., attended school within the district for the 2015-2016 school year while domiciled outside of the District. Accordingly, I **CONCLUDE** that the minor child, M.K., was not entitled to a free public education in the district. 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 "for 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 uncontested record reflects that the actual cost of M.K.'s attendance in-district was \$212.94 per day equaling \$38,329.20 per annum. Accordingly, I **CONCLUDE** that the District is entitled to be reimbursed for tuition by the petitioner in the amount of \$38,329.20. I further **CONCLUDE** that petitioner's appeal should be dismissed.

ORDER

It is, therefore, **ORDERED** that petitioners, pay respondent, Board of Education of the Bridgewater-Raritan Regional School District, Somerset County, tuition in the total

amount of \$38,329.20 for unauthorized attendance in the District schools for the periods stated above. It is further **ORDERED** that the District's determination that the minor child, M.K., was ineligible to attend school while domiciled outside the District is hereby **AFFIRMED**. Petitioner's appeal is **DISMISSED**.

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

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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



April 20, 2017

DATE

DEAN J. BUONO, ALJ

Date Received at Agency:

Date Mailed to Parties:

/vj

APPENDIX

WITNESSES

For petitioner:

M.K.

M.K.

D.K.

J.K., Jr.

For respondent:

Walter Kalicki, Attendance Officer

EXHIBITS

For petitioner:

Exhibit X – Drivers License, Food Stamps and dogs rabies certificate

For respondent:

R-1 Email, dated September 16, 2015

R-2 Report of Walter Kalicki

R-3 Letter from Victor Hayek, dated September 25, 2015

R-4 Letter from Victor Hayek, dated September 25, 2015

R-5 Handwritten Statement of Petitioners

R-6 Letter from Victor Hayek, dated October 16, 2015

R-7 Letter from Victor Hayek, dated November 16, 2015

- R-8 Notes of Committee recommended removal
- R-9 Board of Education of the Bridgewater-Raritan Regional meeting minutes
- R-10 IEP for M.K.
- R-11 Correspondence to MVC from Walter Kalicki
- R-12 Correspondence to MVC from Walter Kalicki
- R-13 Correspondence from Concerned Taxpayer