

D.D. on behalf of minor child N.D., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BELLEVILLE,
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner contested respondent's determination that her daughter, N.D., was not domiciled in respondent's district during the 2003-2004 and 2004-2005 school years. Respondent counterclaims for tuition reimbursement in the amount of \$40,801.33 for the alleged period of ineligible attendance, based on observations by an investigator that D.D. was living at an address in Kearny.

The ALJ found that petitioner has proven by a preponderance of evidence that N.D. was domiciled in respondent's school district during the period in question; that the address in Kearny was never a permanent domicile; and concluded that respondent was required to provide N.D. with a free public education. The ALJ ordered that respondent's counterclaim for tuition be denied.

Upon an independent and thorough review of the record, the Commissioner adopts the Initial Decision as the Final Decision in this matter.

<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 5991-04
AGENCY DKT. NO. 134-4/04

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The record, Initial Decision of the Office of Administrative Law (OAL) and respondent's exceptions have been reviewed. The Commissioner is satisfied, as was the Administrative Law Judge (ALJ), that petitioner sustained her burden to show, using the three-pronged test in *Matter of Unanue*, 255 N.J. Super. 362, 376 (Law Div. 1991), *aff'd* 311 N.J. Super. 589 (App. Div. 1998), *certif. denied*, 157 N.J. 541 (1998), *cert. denied* 526 U.S. 1051, 119 S.Ct. 1357, 143 L.Ed.2d 518 (1999), that during the period for which respondent demands tuition, she had not intended to change her domicile from Belleville to Kearny.

Respondent's references, in its exceptions, to excerpts from *Matter of Unanue*, *supra*, are unpersuasive. The ALJ properly weighed all the facts against the three-part standard in *Unanue* and came to a reasoned result. Nor can the hearsay notes taken by respondent's investigator change this determination. The provider of the hearsay was not at the hearing to be questioned about the basis for her opinions about petitioner's residence and/or domicile from Autumn 2004 to February 2005. Furthermore, as the ALJ stated, petitioner's (and her dogs') use

of her boyfriend's residence did not, under the total facts of this case, establish that she intended to change her domicile from Belleville to Kearny.¹

The Commissioner accordingly adopts the Initial Decision as the Final Decision in this matter. Respondent's determination that N.D. was not eligible to receive a free public education in Belleville during the period in question is reversed and its counterclaim for tuition is denied.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: November 27, 2006

Date of Mailing: November 28, 2006

¹ Nor do the statements respondent's investigator took from the crossing guard and bus driver add anything to the facts already considered by the ALJ.

² This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*