

T.L., ON BEHALF OF MINOR CHILD, A.B., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF UNION, UNION COUNTY, :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner challenged the respondent Board’s determination that her child, A.B., was not entitled to a free public education in Union Township schools. Petitioner asserted that she has lived on M. Place in Union, with her mother and daughter, since 2008 and has lived nowhere else. Petitioner does own a house in Hillside, in which she lived between 2001 and 2008; she described this house as an investment property, but has never rented the property to tenants. The Board contended that A.B. is not domiciled at the Union address provided by the petitioner and sought tuition reimbursement for the period of A.B.’s ineligible attendance.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A. 18A:38-1(a)*, public schools are required to provide a free education to individuals aged 5 to 20 years who are domiciled within the school district; the domicile of unemancipated children is the domicile of their parent or guardian; in the instant case, the Board had good cause to question the residency of A.B. after she informed her teacher, during a social studies lesson, that the house on M. Place in Union Township is her grandmother’s house and that A.B. does not live there; results of the Board’s residency investigation revealed that neither T.L. or A.B. resided at M. Place in Union; rather, the surveillance and testimony demonstrated that A.B. was transported from L. Avenue in Hillside to school in Union Township; no documentation was offered to support T.L.’s claim that she shares expenses with her mother at the Union Township address; additionally, no documentation was supplied to prove that T.L. receives bills for various accounts in her name at the Union Township address; petitioner did supply documentation regarding utility usage at the Hillside address, which were inconsistent with her claim that no one resides there; and T.L. failed to demonstrate by a preponderance of the credible evidence that A.B. is entitled to a free public education in Union Township. The ALJ concluded that A.B. was not entitled to attend school in Union Township during the period in question, and the Board is entitled to tuition reimbursement from T.L. in the sum of \$13,642 for the 2014-2015 school year, and the sum of \$7,666.32 for the 2015-2016 school year through February 26, 2016, plus a per-diem rate of \$75.16 for each day beyond February 26, 2016 that A.B. remained in the district schools.

Upon review, the Commissioner concurred with the ALJ – for the reasons thoroughly set forth in the Initial Decision – that petitioner failed to sustain her burden of establishing that she was a domiciliary of Union Township during the period in question. Further, the Commissioner found petitioner’s exceptions to be without merit. Accordingly, the Initial Decision was adopted as the final decision in this matter and petitioner was directed to reimburse the Board in the amount of \$ 21,308.32, plus \$75.16 for each day beyond February 26, 2016 that A.B. remains enrolled in Union Township schools. The petition 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.

July 13, 2016

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by petitioner and the Board of Education's (Board) reply thereto.

In her exceptions, petitioner argues that the Administrative Law Judge (ALJ) failed to consider the evidence she presented. Specifically, petitioner contends that she testified that she was at work – as evidenced by time sheets – on several days that the residency investigator saw her leaving the Hillside residence. Accordingly, petitioner argues that the investigator's testimony should not be given any credibility. Petitioner further points out that she submitted at least ten documents reflecting her address in Union Township, and that the ALJ erred by ignoring the submissions and failing to afford them any weight.

Petitioner asserts that the ALJ failed to address the testimony of two witnesses – T.L.'s mother and T.L.'s neighbor at the Hillside property. Petitioner maintains that these witnesses testified that she did not live at the Hillside property, and the ALJ disregarded their testimony without assessing their credibility as witnesses. Petitioner also contends that the ALJ should not have relied upon the comments that A.B. – a first grader – made to her teacher stating that she did not live in her grandmother's home in Union Township.

Petitioner further asserts that the ALJ erred by giving weight to the fact that petitioner did not submit her tax returns, W-2 forms, or pay stubs, and could not remember which address she had used on them. As districts cannot request this information as a condition of enrollment in school, it was improper for the ALJ to fault petitioner for not submitting them. Further, the ALJ erred by twisting the evidence submitted by petitioner – *i.e.*, minimal utility bills to show that she did not live in Hillside – into proof that she lived at the Hillside home.

In reply, the Board contends that the ALJ properly found that petitioner failed to demonstrate by a preponderance of the evidence that she is domiciled in Union Township, and therefore petitioner must reimburse the Board for the cost of tuition for the period that A.B. was ineligible to attend school in Union Township. The Board argues that petitioner’s exceptions should be rejected because the ALJ made credibility determinations and detailed the reasoning for her findings. Further, the Board notes that the ALJ’s credibility findings do not need to be “explicitly enunciated,” provided that the record as a whole makes them clear. (Board’s reply at 3).

The Board points out that the ALJ determined that petitioner’s testimony and documentary evidence were not credible, the testimony of the Board’s teaching staff member was credible, and the testimony of the Board’s investigators was credible. The Board urges that such credibility assessments should be given deference and were supported by the evidence in the record. Specifically, the Board emphasizes that petitioner failed to produce credible evidence of a domicile in Union Township – including a lack of proof that she assists with bills in Union Township, tax returns, W-2 forms, recent paystubs, and bills and statements – whereas the Board presented evidence of petitioner’s domicile in Hillside. Further, the Board contends that the testimony of the investigators and teaching staff member were consistent with the evidence.

Additionally, the Board disagrees with petitioner’s argument that the ALJ erred in giving weight to petitioner’s failure to produce filed income tax returns. Specifically, the Board maintains that although Boards cannot condition enrollment based on tax returns, there is nothing prohibiting the Commissioner from considering them on a residency appeal, which is done regularly. As an ALJ is

permitted to draw a negative inference from a party's failure to produce evidence of domicile, the Board argues – to the extent that the ALJ placed weight on the fact that petitioner did not submit tax returns – the ALJ acted appropriately and lawfully.

Upon review, the Commissioner concurs with the ALJ – for the reasons thoroughly set forth in the Initial Decision – that petitioner failed to sustain her burden of establishing that she was a domiciliary of Union Township. At the outset, the Commissioner notes that there is sufficient credible evidence in the record to support the ALJ's finding that petitioner was not domiciled in Union Township for the 2014-2015 and 2015-2016 school years and that the minor child was, therefore, not entitled to a free public education in the District's schools during that time. Notwithstanding the petitioner's contentions to the contrary, the Commissioner finds no basis in the record – which includes more than thirty exhibits and a transcript of the hearing – to reject either the ALJ's recitations of testimony or her determinations of witness credibility. The ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and made findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the 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)*].

A review of the record herein makes clear that the ALJ's factual findings are well supported by same. The record includes: surveillance conducted over a two week period in which the Board's investigator observed T.L. leave the Hillside address and drive her daughter to school on five occasions, which is consistent with school attendance records; surveillance during the same period in which an investigator observed that neither T.L. nor A.B. left the Union Township home in the morning; testimony from A.B.'s teacher as to A.B.'s comments about not living in Union Township; no evidence to support T.L.'s testimony that she assists with utilities at the Union Township home; and utility bills that

T.L. pays for at the Hillside home that are inconsistent with her claim that no one lives there. As such, the evidence in the record supports the ALJ's finding that T.L. is not a domiciliary of Union Township.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against T.L. for the time period during which the minor child was ineligible to attend school in Union Township. Therefore, the Commissioner concurs with the ALJ that the Board is entitled to tuition reimbursement in the amount of \$21,308.32 (\$13,642.00 for the 2014-2015 school year and \$7,666.32 for the 2015-2016 school year through February 26, 2016, during which time petitioner's minor child was ineligible to attend) plus \$75.16 for each day beyond February 26, 2016 that the minor child remains in Union Township's schools.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$21,308.32 – plus \$75.16 for each day beyond February 26, 2016 that A.B. remains enrolled in the District's schools – for tuition costs incurred during the time period that A.B. was ineligible to attend school in Union Township. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: July 13, 2016

Date of Mailing: July 13, 2016

* 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).