

J.R., on behalf of minor children, J.R. and D.R., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF WEST ORANGE, ESSEX COUNTY, :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner filed a *pro se* petition appealing the determination of the respondent Board that her children, J.R. and D.R., were not domiciled in West Orange, and therefore not entitled to a free public education in the West Orange school district. Petitioner contended that she and the children live in West Orange with J.R.’s parents, and are therefore officially domiciled within the Board’s school district. The Board alleged that a residency investigation had shown that J.R. and the children are residing at an address in the city of Newark. The Board sought tuition reimbursement for the period of J.R. and D.R.’s ineligible attendance.

The ALJ found, *inter alia*, that: the testimony provided by the Board’s witnesses was credible, while that of petitioner was not; pursuant to *N.J.A.C.* 6A:22-3.1(a)(1), a student is a resident of a school district if her parent or guardian has a permanent home in the district; the domicile of an unemancipated child is that of her parent or guardian; in the instant case, J.R. contested the Board’s decision that J.R. and D.R. were not properly domiciled in West Orange; the testimony of the Board’s residency inspector and the results of the investigation were credible and indicated that J.R. and her children were domiciled out-of-district in Newark, but continued to attend school in West Orange during the 2015-2016 school year; and the total cost of tuition for J.R. and D.R. in West Orange schools for the 2015-2016 school year was \$11,410.10. The ALJ concluded that the petitioner was not a domiciliary of West Orange for the 2016-2017 school year and her children were therefore ineligible to attend West Orange public schools; accordingly, the respondent Board is entitled to reimbursement of tuition in the amount of \$11,410.10.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed with prejudice.

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 03966-16
AGENCY DKT. NO. 47-2/16

J.R., on behalf of minor children, J.R. and D.R., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF WEST ORANGE, ESSEX COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The parties did not file exceptions.

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain her burden of establishing that she was a domiciliary of West Orange during the 2015-2016 school year. The Commissioner further concurs with the ALJ's conclusion that the minor children were, therefore, not entitled to a free public education in the District's schools during this time.

Pursuant to *N.J.S.A.* 18A:38-1(b), the Board is entitled to tuition reimbursement in the amount of \$11,410.10 (\$5,705.05 per child – \$85.15 per day for 67 days – for J.R. and D.R.) for the time period between November 4, 2015 and March 1, 2016, during which J.R. and D.R. were ineligible to attend school in the District, as detailed in the ALJ's Initial Decision.

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 total amount of \$11,410.10 for

¹ The Commissioner was not provided with a transcript of the June 20, 2017 hearing at the OAL.

tuition costs incurred during the time period that J.R. and D.R. were ineligible to attend school in West Orange. The petition of appeal is hereby dismissed with prejudice

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: August 31, 2017

Date of Mailing: August 31, 2017

² 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 03966-16

AGENCY DKT. NO. 47-2/16

**J.R. ON BEHALF OF MINOR
CHILDREN, J.R. and D.R.,**

Petitioner,

v.

**BOARD OF EDUCATION OF
THE TOWNSHIP OF WEST ORANGE,
ESSEX COUNTY,**

Respondent.

J.R., petitioner, pro se

Frances L. Febres, Esq., for respondent (Cleary, Giacobbe, Alfieri & Jacobs,
attorneys)

Record Closed: June 30, 2017

Decided: July 24, 2017

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE

Petitioner, J.R., is the mother of J.D.R. and D.R. (minor children), who is challenging the determination made by the Board of Education of the Township of West

Orange School District, Essex County (the Board/District) that the mother and the children were not domiciled in the District. The District filed a counterclaim seeking payment of tuition for the number of days that the minor children attended school in the District while not domiciled there.

PROCEDURAL HISTORY

On February 4, 2016, the District notified the petitioner that her minor children (J.D.R. and D.R.) were ineligible to attend the schools of the District due to non-residency and voted to remove the students from the West Orange School District. (R-16.) A hearing was held on February 2, 2016, and the Board recommended that the minor children be removed from enrollment in the District. Petitioner appealed that decision and the Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. There was an apparent delay in processing due to the file not being located. The case was assigned to the undersigned on April 24, 2017. A telephone prehearing conference was held on May 10, 2017. A hearing was held on June 30, 2017, and the record closed on that same day.

FACTUAL DISCUSSION

J.R. is the parent/mother of the minor children. J.R. registered her minor children in the West Orange School District for the 2015-2016 school year, stating she was a renter in West Orange. (R-1.) For the 2015-2016 school year, J.D.R. was enrolled in kindergarten in the District (R-2) and D.R. was enrolled in third grade. The Board completed a residency investigation; thereafter, conducted a residency hearing on February 2, 2016. Respondent filed its notice of final determination of ineligibility on February 4, 2016, determining that the minor children do not reside in the District. As a consequence, the mother of the minor children appealed that determination. The tuition rate of reimbursement as filed with the State by the District for the 2015-2016 school year was \$85.15 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

J.R. is the mother of the minor children who are a third grader (D.R.) and a kindergartener (J.D.R.) at schools located in the District. She testified that she lives with her parents in West Orange, New Jersey, with her two minor children. J.R.'s driver's license has the address, 200 Watchung Avenue, West Orange, New Jersey, displayed on it and was accepted as evidence as well as a letter from her parents to the effect that J.R. resides with them in West Orange and accepted as evidence. (R-4; R-6; R-7.)

The real estate located in West Orange is owned by J.R.'s parents. J.R. testified that she stays at the Newark address (233 South 11th Street) in order to stay with a very good friend of hers on many nights, including all of the nights cited in the Zarro investigation report. (R-13a.) J.R. confirmed that she had her name on a mailbox on the house located at 233 South 11th Street, Newark, for the purpose of her friend avoiding a cable deposit charge and having J.R.'s name on the cable bill. J.R. alleges that her friend pays the cable bill even though it is in her name.

On cross-examination, J.R. acknowledged the pictures submitted by the respondent showed that she and her minor children leaving the Newark address and that her car was parked in front of the Newark address on the dates set forth in the Zarro investigation report. J.R. also confirmed that her name, alone, was on the mailbox at the Newark address and that her friend's name was not displayed at that address. J.R. also admitted that it would have been far more convenient to take her minor children to school from the West Orange address and not Newark and thus residing in Newark was not a decision made for purposes of convenience.

For Respondent

Michael Zarro (Zarro) works for the District as a Residency Officer. Prior to October 27, 2015, personnel received a school work assignment from J.D.R. in Newark. (R-13b.) As a result, he started a residency investigation on petitioner for the West Orange and Newark addresses. (R-13a.) The investigation consisted of a large number of occasions of surveillance as reflected in exhibit R-13a. The investigative report stated in part the following and was confirmed by his testimony:

...

2. On October 27, 2015, I observed the two students getting dropped off at Washington School at 8:00AM for the breakfast program. The students were dropped off in a black Nissan Versa (V45-xxx).
3. On November 4, November 11, November 16, November 24, December 2, December 8, 2015, January 4, 2106 (sp.) at 7:30AM, surveillance was conducted at 200 Watchung Ave. The students or Mrs. [R]**** were not observed exiting this location. Students were reported in attendance at Washington School.
4. On January 7, 2016, at 7:00AM the said vehicle was located on So. 11th St., Newark, NJ. At 7:40AM, the two students and Ms. [R]***** were observed exiting 233 So. 11th St., and entered the said vehicle and drove to Washington School.
5. On January 8, January 11, (photo of vehicle in front of 233 So. 11th St. enclosed) January 12 (photo of the name [R]**** on mailbox at 233 So. 11th St. enclosed), January 13, January 14, January 15, (photo of the two students and Ms. [R]**** exiting 233 So.[.] 11th St. enclosed), January 19, January 20 and January 21, 2015 between 7:30AM and 7:55AM, the two students and Ms. [R]***** were observed exiting 233 So.[.] 11th St.[.], Newark and entered the said vehicle. The hearing letter was given to Ms. [R]**** on January 21, 2016 as she was exiting the said address.
6. On January 21, 2016 at 11:20AM, Ms. [R]**** contacted the office to request a hearing. She started to leave the hearing letter at 200 Watchung Ave. West Orange.

Zarro also testified that the minor children attended the entire school year (180 days) for the 2015-2016 school year and the tuition rate for the 2015-2016 school year was \$85.15 per day. Zarro also testified that J.R.'s minor children attended 109 days in the 2015-2016 school year when they were not residing in West Orange. Based on these figures, Zarro testified that each student incurred tuition in the amount of \$9,281.35 or a total of \$18,562.70.

Respondent, via Zarro or any other witnesses, was unable to present any evidence showing that the minor students did not reside in West Orange from October 27, 2015, until November 4, 2015. Any credible evidence began on November 4, 2015, and ends on March 1, 2016. Accordingly, the number of school days for this period is as follows:

November 2015	11 days
December 2015	17 days
January 2016	19 days
February 2016	19 days
<u>March 2016</u>	<u>1 day</u>
Total Days:	67 days per student

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. 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 additional **FINDINGS OF FACT**:

For the 2015-2016 school year, the minor children of J.R., were enrolled in the third grade and kindergarten in the District. After the District received a school work assignment from J.D.R., which stated that she lived in Newark, the Board completed a residency investigation and conducted a residency hearing on February 2, 2016. The results of the hearing were that the mother of the minor children claimed to be domiciled in West Orange, Essex County, along with her minor children. However, the Board found that J.R., the mother of the minor children, and the minor children were not domiciled in West Orange. The mother and the minor children instead were domiciled at 233 South 11th Street, Newark, New Jersey beginning November 4, 2015, until March 1, 2016, when J.R. re-registered her children in West Orange, residing at an address in West Orange. The tuition rate as determined in West Orange for reimbursement as filed with the State for the 2015-2016 school year was \$85.15 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 there was no evidence regarding J.R.’s residence from October 27, 2015, and that his investigation began on November 4, 2015.

Conversely, the petitioner’s testimony was not credible in the manner in which it was given. J.R.’s own testimony assisted the respondent in proving the facts of the case by a preponderance of the evidence by admitting the number of days she and her

children resided in Newark, New Jersey, while her children attended school in West Orange. Her explanation regarding her name on the mailbox on the Newark house lacked credibility. In addition, simply the sheer number of days, including consecutive days, certainly weigh to support the respondent's case. This detracted from any modicum of credibility.

Therefore, I **FIND** that J.R. and her minor children, J.D.R. and D.R., were domiciled outside the District and instead were domiciled in Newark, New Jersey from November 4, 2015, until March 1, 2016. Accordingly, I **FIND** that both minor children became ineligible to attend school in the District for those days in 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 the minor students attended the District and were ineligible for the 2015-2016 school year. As such, the District must establish the cost of tuition and the number of days the minor students attended the District's schools when they were ineligible to do so. Testimony was uncontroverted 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 \$85.15 per day equaling \$5,705.05 per minor student or a total of \$11,410.01 total school days for the time frame of November 4, 2015, until March 1, 2016, for both minor children.

CONCLUSIONS OF LAW

At issue is whether the minor children were 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 children attended school within the District for the 2015-2016 school year while domiciled outside of the District. Accordingly, I **CONCLUDE** that the minor children were not entitled to a free public education in the District from November 4, 2015, until March 1, 2016. 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 the minor children's (two children) attendance in-district was \$85.15 per day equaling \$11,410.10 for the ineligible time frame. Accordingly, I **CONCLUDE** that the District is entitled to be reimbursed for tuition by the petitioner for her two children in the amount of \$11,410.10. I further **CONCLUDE** that petitioner's appeal should be dismissed.

ORDER

It is, therefore, **ORDERED** that petitioner pay respondent, Board of Education of the Township of West Orange School District, Essex County, tuition in the total amount

of \$11,410.10 for unauthorized attendance in the District schools for the periods stated above. It is further **ORDERED** that the District's determination that the minor children were 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, P.O. 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.

July 24, 2017
DATE


MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

WITNESSES

For Petitioner:

J.R.

For Respondent:

Michael Zarro, Residency Officer

EXHIBITS

For Petitioner:

None

For Respondent:

- R-1 3-Guardian1 Information
- R-2 New Student Registration Information
- R-3 Certificate of Residency: Renter
- R-4 Statement of Landlord
- R-5 Certificate of Live Birth
- R-6 J.R.'s Driver License
- R-7 Letter from J.R.'s parents to "To Whom It May Concern" dated May 21, 2012
- R-8 E-Z Pass Statements for (3/7/12-5/6/12)
- R-9 Pay Statement for J.R from Allegro School
- R-10 Midland Mortgage statement and tax statement for West Orange property owned by J.R.'s parents
- R-11 New Jersey American Water bill and Verizon bill for West Orange property owned by J.R.'s parents
- R-12 Attendance follow-up form

- R-13(a-f) Investigation Report by Michael Zarro, dated February 2, 2016 with attachments
- R-14 Letter from Jeffrey Rutzky, Superintendent, to J.R. dated January 21, 2016
- R-15 Letter from Jeffrey Rutzky, Superintendent, to J.R. dated January 27, 2016
- R-16 Letter from Jeffrey Rutzky, Superintendent, to J.R. dated February 4, 2016