

238-18 (OAL Decision: Not yet available online)

R.E. and S.M., on behalf of minor child, N.E., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION  
OF UNION, UNION COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

In March 2018, *pro se* petitioners appealed the determination of the respondent Board that their child, N.E., is not entitled to a free public education in Union Township schools. Petitioners contend that they have lived on Balmoral Avenue in Union Township for eight years, and that their son, N.E., is met at the school bus by his mother each day; she then drives N.E. to different stores and buys him some food before they return back to the house. The Board argued that a residency investigation indicated that N.E. is not domiciled in Union Township. A hearing was held in this matter on June 20, 2018.

The ALJ found, *inter alia*, that: petitioners reside together with their child in Union; petitioners have resided in their home for eight years; N.E. attends a special needs school in Fanwood, New Jersey, pursuant to his IEP; the respondent Board provides bus transportation for N.E., however S.M. takes him to school on days when N.E. has behavioral issues in the morning; S.M. also takes her son to the store every day after he gets off the bus to allow N.E. to unwind before going home; the District's residency investigator went to petitioners' home on several dates in October 2017 to deliver registration papers, as N.E. had not been registered for the school year, but found no one home on any of the dates; on another date, the investigator observed a car leave the house after school and proceed to a McDonalds; on two occasions, the investigator was spotted by one of the petitioners; in both cases, the investigator was approached and asked why he was outside; and the Board presented no plausible explanation as to where the child and his parents may be residing, other than the Union residence. The ALJ concluded that petitioners and their son are domiciled in Union, and ordered the Board's residency determination reversed.

Upon review, the Commissioner rejected the ALJ's Initial Decision, finding, *inter alia*, that the issue of domicile cannot be resolved on the factual determinations and analysis set forth in the Initial Decision. In this matter, the ALJ appears to have shifted the burden of proof onto the Board, when in fact *N.J.S.A. 18A:38-1(b)(2)* provides that the parent carries the burden to prove by a preponderance of the evidence that the child is eligible for a free education in the school district. The ALJ failed to make credibility determinations on testimony which is not supported by the evidence in the record; further, the ALJ failed to consider and reconcile the factual discrepancies between petitioner's assertions and the result of the residency investigation. The Commissioner remanded the matter to the OAL for clarification of the facts and the legal analysis underlying the ALJ's conclusion, as well as further proceedings as necessary.

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.
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August 8, 2018

OAL DKT. NO. EDU 04252-18  
AGENCY DKT. NO. 54-3/18

R.E. and S.M., on behalf of minor child, N.E., :  
PETITIONER, :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.<sup>1</sup> The parties did not file exceptions to the Initial Decision.

The Administrative Law Judge (ALJ) found that R.E. and S.M. resided in their home in Union for the past eight years, and the Board “presented no plausible explanation on where the child and his parents may be residing other than at the Union resident [sic].” The ALJ, therefore, concluded that petitioners were domiciled in Union and reversed the Board’s residency determination pertaining to N.E. Upon review, the Commissioner rejects the ALJ’s decision and remands the matter to the OAL for the reasons set forth herein.

As a preliminary matter, the Commissioner notes that the burden of proof in a residency appeal rests on the petitioners. *N.J.S.A.* 18A:38-1(b)(2) provides in pertinent part, [t]he parent or guardian . . . shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education. . . .” Therefore, when considering the merits of a residency appeal, the Commissioner looks to the evidence to determine whether it supports the claims of the parent or guardian. *See N.J.S.A.* 18A:38-1(b)(2). In this matter – while not explicitly stated – the ALJ

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<sup>1</sup> The Commissioner was not provided with a transcript of the hearings at the OAL.

appears to have shifted the burden of proof onto the Board when she found that respondent “presented no plausible explanation on where the child and his parents may be residing other than at the Union residen[ce].” Although boards may typically suggest an alternative address or location pertaining to the contested residency, nothing in the statute requires a board to have knowledge of, or show, “where” the child and parents/guardians may be residing if not in the district. Once a board has reasonably determined that the parents/guardian do not reside in the district, the burden to establish domicile in an appeal of that decision is on the parents/guardian. As such, the query and subsequent findings should be centered on whether petitioners have supported their claims by a preponderance of the evidence. The Initial Decision, however, is devoid of any such information or explanation supporting the ALJ’s conclusion.

The Commissioner relies on the ALJ’s credibility determinations of witness testimony, and considers the factual findings and determinations of the ALJ material in rendering a final agency decision. In residency matters, where the adjudication of the issues are fact-specific, it is vital that the factual findings and legal analysis in the Initial Decision provide thorough deliberation of the evidence in the record and apply the facts of the case to the relevant laws. While ALJs are within their discretion to make factual findings and credibility determinations of witnesses pursuant to *N.J.S.A. 52:14B-10(c)* and *N.J.A.C. 1:1-15.8*, the agency head may reject or modify such findings of fact and credibility of lay witness testimony – as well as conclusions of law or interpretations of agency policy – if it is 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. *See N.J.S.A. 52:14B-10(c)*.

In this matter, the ALJ’s finding that R.E. and S.M. are domiciled in Union is not supported by sufficient, competent, and credible evidence in the record. It appears that the ALJ’s

determination is primarily based on witness testimonies, but the Initial Decision does not include a discussion of said testimonies or the ALJ's findings of credibility. The ALJ further failed to address the evidence, *i.e.*, the residency investigation report and the entries therein, which raise issues of fact that were not explored or reconciled in the Initial Decision. The Commissioner, therefore, finds that the issue of domicile cannot be resolved on the factual determinations and analysis set forth in the Initial Decision.

The record before the Commissioner does not support the ALJ's conclusion, nor is it possible to establish from the record – without further proofs, examination, and clarification of the facts – that R.E. and S.M. are domiciled in Union.

Accordingly – for the reasons expressed herein – this matter is hereby remanded to the OAL for clarification of the facts and the legal analysis underlying the ALJ's conclusion, and further proceedings as necessary.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: August 8, 2018

Date of Mailing: August 8, 2018

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<sup>2</sup> 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).