

D.H., on behalf of minor child, D.H., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF PISCATAWAY, MIDDLESEX COUNTY, :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner challenged the residency determination of the respondent Board that her minor child was not entitled to a free public education in the Piscataway School District. Petitioner asserted that she and her children live in Piscataway, but would sometimes house-sit for her parents in Plainfield when they were away for extended periods visiting family in Virginia. The Board contended that the results of a residency investigation showed that D.H. was domiciled out-of-district in Plainfield. Accordingly, the Board sought tuition reimbursement in the amount of \$8,512.71 for the time period between May 7, 2015 and June 18, 2016, and from September 8, 2015 to February 17, 2016.

The ALJ found, *inter alia*, that: D.H. attended respondent’s public schools from third grade through high school; in April 2014, petitioner entered into a lease for an apartment in Piscataway and remained domiciled there through April 2015; she continued to live in the apartment after the lease expired in April 2015; petitioner’s parents owned a home in Plainfield, a few blocks from petitioner’s apartment in Piscataway; petitioner sometimes house-sat for her parents in Plainfield and stayed overnight, but always returned to her domicile in Piscataway. The ALJ concluded that, under the circumstances, petitioner and her son were domiciled in Piscataway during the period in question, and D.H. was entitled to a free public education in Piscataway schools. Accordingly, the ALJ ordered that the Board’s counterclaim for tuition is denied.

Upon review of the record in this matter, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision as the final decision in this matter.

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 02445-16
AGENCY DKT. NO. 35-2/16

D.H., on behalf of minor child, D.H., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF PISCATAWAY, MIDDLESEX COUNTY, :
RESPONDENT. :
_____ :

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

Upon such review, the Commissioner concurs with the Administrative Law Judge's finding that petitioner sustained her burden of establishing that D.H. was a domiciliary of Piscataway between May 2015 and February 2016, and therefore, D.H. was entitled to a free public education in the District's schools during this time. The Commissioner further concurs that the Board is not entitled to tuition reimbursement.¹

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The petition of appeal is hereby granted and respondent's counterclaim for tuition is denied.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: September 20, 2018

Date of Mailing: September 21, 2018

¹ Pursuant to *N.J.S.A.* 18A:38-1(b), the Board sought tuition reimbursement in the amount of \$8,512.71 for the time period between May 7, 2015 and June 18, 2016, and from September 8, 2015 to February 17, 2016.

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 02445-16

AGENCY DKT. NO. 35-2/16

D.H. ON BEHALF OF MINOR CHILD

D.H.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF PISCATAWAY,
MIDDLESEX COUNTY,**

Respondent.

D.H., pro se

David B. Rubin, Esq., for respondent

Record Closed: April 17, 2018

Decided: August 16, 2018

BEFORE **RICHARD McGILL**, ALJ (Ret., on recall):

D.H. ("petitioner") filed a petition with the Commissioner of Education challenging a residency determination by the Board of Education of the Township of Piscataway (hereinafter "respondent" or "District") in regard to her son, D.H., who was attending respondent's high school. Respondent counterclaims for tuition reimbursement in the

amount of \$8,512.71 for periods of ineligible attendance by D.H. from May 7, 2015, to June 18, 2015, and from September 8, 2015, to February 17, 2016.

PROCEDURAL HISTORY

Petitioner filed her petition on February 17, 2016, invoking the Commissioner's authority to hear and determine controversies arising under the school laws pursuant to N.J.S.A. 18A:6-9. The matter was transmitted to the Office of Administrative Law on February 18, 2016, for determination as a contested case.

Due to the fact that the petition was untimely relative to the twenty-one day time limit set forth in N.J.S.A. 18A:38-1(b)(1) to keep D.H. in respondent's schools during the pendency of the appeal, petitioner filed a motion for emergent relief. Petitioner's motion was denied by an Order dated March 3, 2016, which was adopted by the Commissioner on March 23, 2016.

Meanwhile, petitioner reestablished her residency within respondent's school district. As a result, D.H. returned to respondent's high school in early March 2016. Hearings were conducted on September 12, 2017, and February 22, 2018, and the record closed on April 17, 2018, upon receipt of briefs.

ISSUES

The first issue in this proceeding is whether D.H. was domiciled in respondent's school district from May 7, 2015, to June 18, 2015, and from September 8, 2015, to February 17, 2016. The second issue is whether petitioner should be required to pay tuition reimbursement for the periods in question.

FACTS

Some background facts are not in dispute, and I **FIND** as follows. D.H. .

attended respondent's public schools from third grade through high school. In May 2015, Assistant Truant Officer Martin Hibinski began an investigation as to whether D.H. was residing within the school district. The investigation continued during the period from September 2015 to February 2016. As a result of the investigation, respondent removed D.H. from the District's schools by decision dated December 21, 2015, and terminated D.H.'s enrollment effective February 5, 2016. After petitioner tried unsuccessfully to enroll D.H. in the Plainfield school district, petitioner reestablished her residency in Piscataway. As a result, D.H. was reenrolled in respondent's high school in early March 2016.

SUMMARY OF EVIDENCE

A. Respondent's Witnesses

1. Martin Hibinski

Martin Hibinski testified that he is employed by respondent as an assistant truant officer and investigator. His primary responsibility is to conduct investigations into residencies of students enrolled in the District's schools.

Officer Hibinski conducted surveillances in regard to D.H. in May 2015 and from September 8, 2015, to December 4, 2015. D.H. was entering eleventh grade when the surveillance began in September 2015. The surveillances were conducted randomly as opposed to every day. Based upon his observations, Officer Hibinski concluded that petitioner was residing in Plainfield and not at the address which she had given in Piscataway. Subsequent to respondent's decision to remove D.H., Officer Hibinski conducted additional surveillances from December 21, 2015, to February 24, 2016.

Officer Hibinski described the patterns of behavior that he observed during the surveillances. He would arrive at petitioner's address in Plainfield between 5:30 a.m.

and 5:45 a.m. and wait until they left. By arriving very early, Officer Hibinski ensured that petitioner and D.H. did not drive there from the address in Piscataway. D.H. had an assigned bus stop in Piscataway.

The predominant scenario was that petitioner and D.H. came out of the residence in Plainfield and drove to the bus stop in Piscataway. Petitioner then dropped off D.H. and returned to the residence in Plainfield.

On September 16, 2015, Officer Hibinski went to the address in Plainfield and spoke with petitioner, who claimed that she lived at the address in Piscataway. Officer Hibinski and petitioner drove to the Piscataway address, where petitioner could not produce a key to the apartment. Petitioner had to knock on the door to get into the apartment. A young man opened the door, and they entered the apartment. Petitioner said that the things there were hers, but Officer Hibinski did not see anything that he was satisfied belonged to petitioner.

Officer Hibinski encountered petitioner on one other occasion. He hand-delivered an envelope from Truant Officer Kristine Leyra to petitioner at the Plainfield address, but there was little conversation at that time.

In regard to a contention that D.H. did not go to school on some dates when Officer Hibinski maintains that petitioner dropped D.H. off at the bus stop, Officer Hibinski stated that he would not know whether D.H. actually went to school. If D.H. was in fact absent on some the dates in question, this circumstance would not have changed Officer Hibinski's opinion.

On cross-examination, Officer Hibinski acknowledged that an entry on his report for December 21, 2015, states that he saw D.H. being dropped off at the bus stop and that he followed the known vehicle back to the residence in Plainfield, but he stated that an update noted that D.H. was absent on that date. Officer Hibinski stated that references to petitioner's known vehicle meant a silver Infiniti. Officer Hibinski observed

petitioner driving the vehicle, but he could not identify the owner. Officer Hibinski stated that the residence in Plainfield is approximately two blocks from the one in Piscataway. On December 28, 2015, Officer Hibiniski noted that petitioner's known vehicle was in the driveway at the residence in Plainfield at 5:30 a.m. and 10:05 p.m. Officer Hibinski acknowledged that he did not know which vehicle petitioner drove to work that day. Similarly, on January 3, 2016, Officer Hibinski observed that petitioner's known vehicle was in the driveway at the residence in Plainfield at 8:30 a.m. and 8:45 p.m.

According to Officer Hibinski's report, D.H. left the residence in Plainfield at 6:35 a.m. on February 9, 2016. Officer Hibinski was not aware of the date on which D.H. ceased to attend respondent's schools.

When Officer Hibinski and petitioner went to the address in Piscataway on September 16, 2015, and entered the apartment, Officer Hibinski first noticed a living room with a bed on the side. Officer Hibinski also saw petitioner's daughter, her boyfriend and a newborn child. Petitioner presented a birth certificate which indicated that petitioner's daughter, B.H., and P.N. had a four-year-old son, but Officer Hibinski could not say that the birth certificate was for the same child.

On redirect examination, Officer Hibinski said that for his purposes he did not need to know to whom the Infiniti was registered. Officer Hibinski only needed to know that petitioner was driving the car. The fact that the car was in the driveway late at night and early in the morning would indicate that petitioner spent the night there and that she resided there. Officer Hibinski stated that he made approximately fifty observations in regard to D.H. and that if he was mistaken as to some of them, it would not change his conclusion.

At the hearing before respondent on December 17, 2015, petitioner stated that she was house-sitting the residence in Plainfield for her parents and that her daughter and others were staying at the address in Piscataway on a temporary basis. Petitioner gave no reason that her daughter could not house-sit the house in Plainfield.

2. Kristine Leyra

Kristine Leyra testified that she is employed by respondent as the District Truancy Officer. She supervises the enrollment center, and she is the registrar for the District.

Officer Leyra went to the address in Piscataway on one occasion, and a young man answered the door. Ms. Leyra identified herself with her name and her position as the district truancy officer. Ms. Leyra never stated that she was a probation officer or any type of law enforcement. Ms. Leyra did not get the young man's name.

Ms. Leyra said that she was looking for "Ms. H.," and the young man said that she was not there. Ms. Leyra asked if "Ms. H." would be coming back soon, and the young man said that "Ms. H." did not live there. Ms. Leyra asked where "Ms. H." lived, and the young man said that she lived at the address in Plainfield. After a brief conversation, Ms. Leyra left the address in Piscataway.

Ms. Leyra was present at the hearing before respondent on December 17, 2015. Petitioner said that she was house-sitting for her parents who were attending to some family health issues in Virginia and that the situation was likely to go on for a while.

Ms. Leyra received a letter dated January 7, 2016, from petitioner stating that she had returned to her apartment in Piscataway. Ms. Leyra took the letter to mean that petitioner was returning from another address. Ms. Leyra was satisfied that petitioner and D.H. had in fact returned to Piscataway and that residency was no longer an issue.

The claim for reimbursement of tuition is from May 2015 to a point in time in February 2016. Ms. Leyra explained the determination of the number of school days of ineligible attendance by D.H. and the applicable daily tuition rates. The tuition for the

periods of ineligible attendance would be \$1,931.11 for May and June 2015 and \$6,581.60 for September 2015 through February 2016 for a total of \$8,512.71.

B. Petitioner's Witnesses

1. D.H.

D.H. testified that he attended school in Piscataway from fourth grade through high school. The family lived at three locations in Piscataway before moving to the current address, where D.H. stayed with petitioner and his sister, C.H. The apartment in Piscataway had a living room, a kitchen, two bedrooms and a finished attic. C.H. and D.H. had bedrooms on the main floor, and petitioner slept in the attic.

D.H. stayed at the address in Plainfield only when his grandmother was in Virginia. Petitioner and D.H. were at the address in Plainfield, because they were house-sitting the property. When his grandmother was at the residence in Plainfield, D.H. stayed at the apartment in Piscataway.

In regard to his attendance, D.H. stated that he never cut school. When a child is absent, school personnel call the student's parent. Petitioner drove several cars including a Mazda, a Beetle and an Infiniti. D.H.'s last day in respondent's high school was February 2, 2016. D.H. did not go to school on February 9, 2016, and he did not go out at 6:35 a.m., as stated in Officer Hibinski's report. D.H. did not live at the address in Plainfield except for house-sitting, until after he graduated.

On cross-examination, D.H. stated that from May 2015 to February 2016 he was back and forth frequently between the addresses in Piscataway and Plainfield. D.H. was removed from Piscataway schools in early February 2016 and returned a month later in March 2016. Petitioner tried to get D.H. enrolled in the Plainfield, but she used an address in Piscataway on the application. D.H. stated that he resided at the address in Piscataway at the time.

2. C.H.

C.H. a/k/a K.H. testified that she attended elementary school, middle school and high school in Piscataway. Throughout that time, C.H. lived at various addresses in Piscataway, including most recently the address in Piscataway, where she lived with petitioner and D.H.

C.H. and D.H. had separate bedrooms in the apartment, and petitioner slept in the attic or on a couch in the living room. The entrance to the apartment is in the kitchen, which leads to the living room. There are two bedrooms and a door to the attic on that floor.

C.H. got pregnant in July 2015, and she went to live at her grandparent's house, leaving petitioner and D.H. in the apartment in Piscataway. C.H.'s daughter was born in March 2016.

C.H.'s sister, B.H., lives in North Carolina with her son, M.N., and her son's father, P.N. M.N. was born on October 26, 2011, and he would not have been an infant in 2014 or 2015. When B.H. and P.N. came to New Jersey, they would sleep in the apartment in Piscataway. B.H. and P.N. visited from North Carolina three or four times.

On one occasion, P.N. called C.H. and told her that her probation officer was at the door. P.N. described the appearance of the probation officer as a white female with blonde hair, and C.H. said that the person could not possibly be her probation officer, who was a black male.

Petitioner and D.H. were in Plainfield to house-sit C.H.'s grandparents' residence, while they were in Virginia. There were occasions when C.H.'s grandparents returned

to the residence in Plainfield and petitioner left the house. C.H. stated that petitioner drove several cars including a Mazda, a Volkswagen and an Infiniti.

On cross-examination, C.H. stated that she completed probation, and the charge against her was dismissed. P.N. assumed the person at the door was C.H.'s probation officer, and he was saying that C.H. was not there.

3. David Linde

David Linde was a manager at a Verizon store in Manalapan, where petitioner was an employee. Petitioner drove several cars to work including a Mazda, a Volkswagen and an Infiniti. Occasionally, Mr. Linde gave petitioner a ride home to the address in Piscataway. Mr. Linde has never known petitioner to live at any other address.

Officer Hibinski's report noted that petitioner's known vehicle was present at the Plainfield address on Sunday, February 14, 2016, at 8:00 a.m. and 5:30 p.m. According to time records, petitioner worked at the Verizon store on that date from 1:30 p.m. to 9:15 p.m. After work, a group of employees went to Applebee's, and petitioner was driving the Infiniti. The address in Plainfield was approximately a thirty-minute drive from the Verizon store. The Infiniti could not have been at the Plainfield address at 5:30 p.m. on February 14, 2016.

Petitioner never stated to Mr. Linde that she did not live at the address in Piscataway. Likewise, petitioner never stated that she intended to move to the address in Plainfield.

On cross-examination, Mr. Linde stated that petitioner worked for him from 2012 or 2013 to September 2016. Mr. Linde considers petitioner to be a friend.

Mr. Linde further testified that Verizon's records showed that petitioner lived at the address in Piscataway. Petitioner never reported a change in address to Mr. Linde.

4. Petitioner D.H.

Petitioner testified that she has lived in Piscataway since D.H. was in the third grade. Petitioner moved from another location in Piscataway to the apartment in Piscataway in April 2014 and that she had a lease which initially ran from April 19, 2014, to April 30, 2015. The apartment was occupied by petitioner and her two children, sixteen-year-old C.H. and fifteen-year-old D.H. From May to December 2015, petitioner had a month-to-month agreement, but she was there and paying rent. Petitioner also produced a lease from January 1, 2016, to December 31, 2016, but the copy provided by petitioner lacked the signature page. Petitioner produced photocopies of checks for the rent for September and December 2014 and January through June and September through November 2015. It is noteworthy that the address on the check is the address in Plainfield.

Petitioner's parents owned and lived in a free-standing house at the address in Plainfield. In May or June 2015, petitioner's parents went to Virginia to try to help with health issues in a sister's family. Petitioner's parents asked petitioner to house-sit for them while they were away. As a result, petitioner stayed overnight in her parents' home. Petitioner's parents came back to New Jersey, and petitioner returned to her apartment for July and August. Thereafter, petitioner's parents decided to permanently relocate to Virginia, and they did so around September or October 2015. Whenever petitioner's parents were not in the home, she would house-sit for them, meaning that she would stay there overnight. Petitioner's belongings remained in her apartment. Petitioner's parents returned to New Jersey for doctors' appointments and stayed in their home. Petitioner's parents decided to allow a foreclosure on the house. The arrangement lasted until a foreclosure in September 2017. In the meantime, petitioner was going back and forth so that no one would vandalize the house. When petitioner went to her parents' house, her children went with her except that C.H. would

occasionally stay in the apartment, while she was still a Piscataway school student. Petitioner did not record specific dates or times spent at the two locations, but she maintained her address in Piscataway.

Petitioner's father owned an Infiniti that was registered in New Jersey. Petitioner presented a letter dated July 23, 2015, from Wells Fargo referring to a foreclosure on her parents' property. Petitioner also presented a letter dated December 15, 2015, signed by both of her parents, stating that petitioner keeps an eye on their property when they are not there.

As of 2015, petitioner's older daughter, B.H., was living in North Carolina with her boyfriend and her four-year-old son, and they would visit petitioner once or twice a year for a week or two at a time. B.H. was twenty years old in 2015. B.H. had a driver's license issued in North Carolina on October 31, 2014.

Petitioner received a letter dated November 23, 2015, from respondent concerning D.H.'s enrollment in the District's high school, advising that there was a hearing scheduled for December 17, 2015. On December 21, 2015, respondent issued a determination to the effect that D.H. was not properly enrolled in the Piscataway schools. C.H. was not impacted because she was a senior at the time and benefited from senior privilege, which allows a student who has completed three years and moved out of the school district to complete his senior year there.

Petitioner sent a letter dated January 7, 2016, stating that she had returned to the address in Piscataway. Nonetheless, on a date in February 2016, D.H. was told that he was no longer a student and that he was not allowed to get on the school bus.

At one point, petitioner tried to register D.H. in the Plainfield schools. At that time, petitioner gave the address on her driver license, which was the address in Piscataway, and she explained that she was house-sitting in Plainfield. D.H. was denied enrollment in the Plainfield public schools. At that point, petitioner filed the appeal in this matter.

A new truant officer told petitioner that once he established that D.H. was actually living in Piscataway, respondent would reconsider his enrollment in its schools. About six weeks later, D.H. went back to school.

In September 2016, petitioner moved to Freehold, New Jersey, because it was closer to her job. D.H. was allowed to finish high school in Piscataway based on senior privilege.

Petitioner referred to various forms of documentation in regard to her address. The Piscataway address was on petitioner's driver's license and other papers including a loan statement, an insurance claim, a payment request from the New Jersey Turnpike Authority, a surcharge payment reminder from the State of New Jersey and a credit card statement.

In regard to the lease for 2016, petitioner did not recall ever signing it, but she paid the rent. In 2015 petitioner paid the rent for most months by check, but in some months she paid with cash.

Petitioner stated that there are inaccuracies in Officer Hibinski's report concerning surveillances. Petitioner made typed notations on pages from Officer Hibinski's report and presented a Genesis report which shows the dates on which D.H. was absent.

An entry on Appendix A to Officer Hibinski's report states that on December 21, 2015, D.H. did not leave from the address in Piscataway. Officer Hibinski observed D.H. being dropped off at the bus stop by a vehicle which returned to the address in Plainfield. An update notes that D.H. was absent on that date. The Genesis report confirms that D.H. was absent on that date. The vehicle was the Infiniti which belonged to petitioner's father as opposed to herself.

The entry for December 28, 2015, states that petitioner's known vehicle was in the driveway at 5:30 a.m. and 10:05 p.m. Petitioner's timesheet shows that she was at

work on December 28, 2015, from 1:01 p.m. to 9:54 p.m. Petitioner could not have been at work at 9:54 p.m. and in Plainfield at 10:05 p.m. The presence of the Infiniti at the address in Plainfield does not mean that petitioner was also there.

The entry on Appendix A for Sunday, January 3, 2016, indicates that the Infiniti was at the address in Plainfield at 8:30 a.m. and 8:45 p.m. Petitioner's timesheet for January 3, 2016, indicates that she was at work from 8:32 a.m. to 6:03 p.m. Petitioner states that she could not make the thirty-seven-minute commute from Plainfield to her workplace between 8:30 a.m. and 8:32 a.m. Again, the presence of the Infiniti did not mean that petitioner was at the address in Plainfield. At the time, petitioner was driving a Mazda or a Volkswagen.

Appendix B to Officer Hibinski's report relates to the period from September 8, 2015, to September 16, 2015. The entry for September 8, 2015, states that D.H. did not leave from the address in Piscataway and that the vehicle from which D.H. was dropped off was followed back to the address in Plainfield. Petitioner stated that this notation did not identify the person who dropped off D.H.

For Saturday, September 12, 2015, the entry states that the known vehicle was present at the Plainfield address at 8:15 a.m. According to petitioner, this entry does not really prove anything. The Infiniti belonged to her father, and she had another car of her own.

An entry notes that there was no school on September 14, 2015, due to Rosh Hashanah and that the known vehicle was present at the Plainfield address at 7:00 a.m. and 7:45 p.m. Petitioner's timesheet shows that she was at work from 2:08 p.m. to 9:00 p.m. on that date.

Appendix C to Officer Hibinski's report relates to the period from September 21, 2015, to December 4, 2015. The entry for September 25, 2015, states that the student left for school from an out-of-district residence at 6:35 a.m. According to petitioner, the

entry does not identify the person who took D.H. to school, and petitioner was at work from 6:45 a.m. to 1:00 p.m.

The entry for October 5, 2015, states that the known vehicle was at the address in Plainfield and that the student was absent that day. Petitioner notes that the entry relates to the vehicle and not petitioner. Similarly, the entry for November 20, 2015, states that the known vehicle was present at the Plainfield address from 6:10 a.m. to 7:30 a.m. and that the student was absent that day. Petitioner produced an Enterprise receipt for a rental car on that date through November 23, 2015. To expedite the process, petitioner stated that there were thirteen entries in this period that referred only to observations of the known vehicle.

An entry for January 20, 2016, indicates that at 6:35 a.m. D.H. left the Plainfield address for school driven by petitioner. The Genesis report indicates that D.H. was absent on January 20, 2016.

By letter dated February 1, 2016, Officer Leyra advised petitioner that Friday, February 5, 2016, would be D.H.'s last day of enrollment in respondent's school and that he would be withdrawn from the District's rolls. Officer Hibinski delivered the letter to petitioner on February 2, 2016.

An entry for February 8, 2016, stated that petitioner's vehicle was in the driveway at the address in Plainfield. The entry for February 9, 2016, states that D.H. left for school at 6:35 a.m. from the out-of-district residence, even though D.H. had already been disenrolled from respondent's school and he did not have a bus pass. Petitioner stated that she did not send D.H. to school on February 9, 2016.

An entry for Saturday, February 13, 2016, stated that at 8:45 a.m. the known vehicle was present at the address in Plainfield. Petitioner's timesheet for February 13, 2016, indicates that she worked from 7:30 a.m. to 3:30 p.m. The entry for February 14, 2016, states that the known vehicle was at the address in Plainfield at 8:00 a.m. and

5:30 p.m. Petitioner's timesheet indicates that she worked from 1:30 p.m. to 9:15 p.m. on that date, and a credit card receipt from Applebee's shows a charge at 10:29 p.m. on that date, reflecting that five employees including petitioner went out after work.

Petitioner also presented a list of forty to fifty text messages between herself and her landlord from December 28, 2015, to February 19, 2016. The text messages relate to topics such as the rent, heat and the parking lot.

Officer Hibinski's reporting was also inaccurate in regard to the occasion when Officer Hibinski and petitioner went to the address in Piscataway. Petitioner testified that they never entered the apartment. Officer Hibinski's description of the layout of the apartment was not accurate including a statement that there is one bedroom. The first room upon entering the apartment is the kitchen, and on the same floor, there are a living room and two bedrooms. The apartment includes a full finished attic. As a result, Officer Hibinski would not have been able to see petitioner's belongings. Petitioner's furniture and clothes were in the apartment. Officer Hibinski referred to a newborn baby, but B.H.'s son was born in 2011.

Petitioner had her own car distinct from her father's Infiniti. When petitioner's parents were in New Jersey for the summer, petitioner was in her apartment for the entire time. Petitioner had every intention of going back to her apartment, when the house-sitting ended.

On cross-examination, petitioner stated that her original lease for the address in Piscataway ended in April 2015. Petitioner acknowledged that she did not ask for a new lease, until after she received a letter from respondent in November 2015. Petitioner used the address in Piscataway for her credit cards, her bank statement and her insurance records.

Petitioner was house-sitting for her parents. There were times when petitioner was at her parents' home for a week or two. There was a time when she was at her

apartment for two months. She was going back and forth between the two locations. When petitioner wrote in the letter to the Board dated January 7, 2016, that she had returned to the address in Piscataway, she meant that she was no longer spending nights at her parents' residence.

LAW AND ANALYSIS

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 child's domicile is normally that of his or her parents. Somerville Bd. v. Manville Bd., 332 N.J. Super. 6, 12 (App. Div. 2000), *aff'd*, 167 N.J. 55 (2001); N.J.A.C. 6A:22-3.1(a)1. 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. Matter of Unanue, 255 N.J. Super. 362, 374 (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 (1999).

A person may have more than one residence but only one domicile. Mercadante v. Paterson, 111 N.J. Super. 35, 39 (Ch. Div. 1970). Establishing a domicile involves an act of volition. Matter of Unanue, 255 N.J. Super. at 375. Domicile is essentially a question of residence and intention. State v. Benny, 20 N.J. 238, 251 (1955).

Once domicile is established, it continues until it is superseded by a new one. In re Estate of Gillmore, 101 N.J. Super. 77, 87 (App. Div. 1968). In Matter of Unanue, the Court stated as follows:

In considering whether a change of domicile has occurred, three elements must be considered: 1) whether there had been an actual and physical taking up of an abode in a particular state; 2) whether the subject had an intention to make his home there permanently or least indefinitely; and (3) whether the subject had an intention to abandon his old domicile. The court must evaluate all of the facts of the case to determine the place in which there is the necessary concurrence of physical presence and an

intention to make that place one's home. [Matter of Unanue, 255 N.J. Super. at 376 (citations omitted)].

The question of domicile is one of fact; each case must be evaluated and determined based on its own facts and circumstances. Lea v. Lea, 18 N.J. 1, 7 (1955). In this case, three periods of time need to be considered separately. The first period of time is from April 2014 to April 2015, the second is from May 2015 to June 2015, and the third is from September 2015 to February 2016.

With respect to the period from April 2014 to April 2015, petitioner and two of her children, C.H. and D.H., gave uncontradicted testimony which was readily believable and supported by documentation. Their testimony is accepted as true, and based thereon and various exhibits, I **FIND** as follows. In April 2014, petitioner entered into a lease for an apartment at the address in Piscataway. The term of the lease was from April 19, 2014, to April 30, 2015. The apartment was occupied by petitioner, C.H. and D.H. At the time, C.H. and D.H. were attending respondent's high school. The entrance from the hallway led to the kitchen. On that floor there were two bedrooms, a living room with a sofa bed and a doorway led to a finished full attic. C.H. and D.H. had the two bedrooms, and petitioner slept in the attic or on the sofa bed in the living room. Petitioner had her furniture in the apartment, and she had no other residence at the time. Petitioner intended to remain at this address.

It is evident that these circumstances fall within the concept of domicile as set forth above. Therefore, I **CONCLUDE** that the apartment in Piscataway was petitioner's domicile from April 2014 through April 2015.

The second period included May and June 2015. The testimony in regard to this period was rather brief. Officer Hibinski conducted a two-week investigation and concluded that petitioner and D.H. were at an address in Plainfield. Petitioner explained that the home in Plainfield was owned by her parents and that they were staying with her sister in Virginia. At her parents' request, petitioner was house-sitting the property to prevent vandalism or any other untoward event.

The parties draw different conclusions from these circumstances, but their factual assertions are essentially consistent. Based upon the evidence presented at the hearing, I **FIND** as follows. Petitioner's parents owned a home in Plainfield only a few blocks from petitioner's apartment in Piscataway. Petitioner's parents went to stay in Virginia due to a health issue in the sister's family. While her parents were away, petitioner was house-sitting their residence and stayed overnight there. Petitioner did not house-sit the residence in Plainfield in July and August 2015, and she stayed in her apartment during that two-month period.

There is no indication that petitioner intended to change her domicile from the apartment in Piscataway to the residence in Plainfield. On the contrary, the fact that petitioner returned to her apartment for July and August 2015 and did not spend nights at the residence in Plainfield strongly indicates that petitioner did not intend to change her domicile from the apartment in Piscataway to her parents' home in Plainfield. Further, there is no indication that petitioner gave anyone a change of address for any purpose. Finally, petitioner had ample reason to maintain her domicile in Piscataway in that she wanted C.H. and D.H. to attend school in that district. Therefore, I **CONCLUDE** that the apartment in Piscataway was petitioner's domicile in May and June 2015 as well as July and August 2015.

The testimony and exhibits in regard to the period from September 2015 to February 2016 require some discussion. Officer Hibinski made approximately fifty surveillances in regard to D.H. including thirty involving D.H. leaving from an out-of-district location and twenty related to the "known vehicle" which was the Infiniti owned by petitioner's father. The observations of the known vehicle were intended to support the inferences that petitioner was present at the address in Plainfield early or late in the day and further that she stayed overnight at that location. The difficulty with this analysis is that petitioner had her own car, and she successfully demonstrated that she was at work at the times of many of the observations of the known vehicle at the address in Plainfield. It follows that the presence of the known vehicle does not warrant the inference that petitioner was present at the address in Plainfield at those particular

times. Nonetheless, with only a few exceptions, Officer Hibinski demonstrated that on approximately twenty-five occasions D.H. departed for school from the address in Plainfield. Combined with petitioner's explanation that she was house-sitting the residence in Plainfield, it is evident that petitioner and D.H. spent many nights at the address in Plainfield. In effect, the address in Plainfield was a second residence for petitioner and D.H. during this period of time.

Officer Leyra visited the address in Piscataway and spoke with P.N. at approximately 6:50 a.m. The difficulty with Officer Leyra's testimony is that when she spoke of Ms. H., the reference could have been to C.H. or petitioner. C.H. testified that P.N. later told her that her probation officer was looking for her. Under the circumstances, it is questionable whether P.N. really understood that Officer Leyra was looking for petitioner. At most, this exchange only confirms the testimony of Officer Hibinski and petitioner to the effect that petitioner was spending many nights at the address in Plainfield.

Officer Hibinski testified that when he visited the apartment in Piscataway with petitioner, he did not observe any property that belonged to petitioner. One difficulty with this testimony is that Officer Hibinski had only a very limited opportunity to observe the apartment. In addition, it is not apparent how anyone could tell whether furniture or clothing belonged to D.H. or B.H. It follows that this testimony is not entitled to any weight.

Based upon the evidence presented at the hearing, I **FIND** as follows. D.H. was paying the rent for the apartment in Piscataway, and the furniture and clothing in the apartment belonged to her. Further, petitioner exchanged text messages with the landlord during December 2015 and January 2016 concerning rent, heat and the parking lot. Petitioner's address in Piscataway was on her driver's license and other papers such as a loan statement, an insurance claim, a payment request from the New Jersey Turnpike Authority, a surcharge payment reminder from the State of New Jersey and a credit card statement. Further, the fact that a foreclosure was pending on

the residence in Plainfield is an indication that petitioner's stay there was temporary in nature. There is no indication that petitioner gave anyone a change of address to the location in Plainfield during this period of time.

The surrounding facts indicate that petitioner did not intend to change her domicile to Plainfield. Because petitioner wanted D.H., and C.H. as well, to continue school in Piscataway, it would make no sense for her to change her domicile to Plainfield. Finally, petitioner did in fact return to the apartment in Piscataway. Under the circumstances, I **CONCLUDE** that petitioner and D.H. were domiciled at the apartment in Piscataway during the period from September 2015 to February 2016.

A counterclaim for tuition reimbursement may be granted when there is a period of ineligible attendance in a public school. N.J.S.A. 18A:38-1(b)(2). In this case there was no period of ineligible of attendance. Therefore, I **CONCLUDE** that respondent's counterclaim for tuition reimbursement must be denied. As noted above, the question concerning D.H.'s continued attendance at the District's high school has been resolved by the parties.

Accordingly, it is **ORDERED** that respondent's counterclaim for tuition reimbursement be denied.

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.

August 16, 2018



DATE

RICHARD MCGILL, ALJ (Ret., on recall)

Date Received at Agency:

August 16, 2018

Date Mailed to Parties:

August 16, 2018

ljb

APPENDIX

WITNESS LIST

For petitioner:

Martin Hibinski

Kristine Leyra

For Respondent:

D.H.

C.H.

David Linde

D.H. (petitioner)

EXHIBIT LIST

- P-1 Enterprise car rental receipt (1 page)
- P-2 Residential Lease Agreement dated April 18, 2014 (4 pages)
- P-3 Residential Lease Agreement dated December 15, 2015 (3 pages)
- P-4 Photocopies of cancelled checks and bank statement (10 pages)
- P-5 Letter dated December 1, 2016, from MetLife to D.H. (1 page)
- P-6 E-mail chain (4 pages)
- P-7 Appendix A with attachments (11 pages)
- P-8 Appendix B with attachments (6 pages)
- P-9 Appendix C with attachments (14 pages)
- P-10 Appendix A, p.2 with attachments (20 pages)

P-11 Page 2 of Officer Hibinski's report dated December 4, 2015, with attachments (15 pages)

P-11A Statements (10 pages)

R-1 Investigation Report dated December 4, 2015, with attachments (5 pages)

R-2 Investigation Report dated February 25, 2016, with attachment (5 pages)

R-3 Letter dated November 23, 2015, from David B. Rubin, Esq., to D.H. (2 pages)

R-4 Letter dated December 21, 2015, from David B. Rubin, Esq., to D.H. (3 pages)

R-6 Letter dated January 7, 2016, from D.H. (1 page)

R-7 E-mail chain

R-8 Letter dated February 16, 2016, from Department of Education to Parties with attached Pro Se Residency Appeal (4 pages)

R-9 Order on Motion for Emergent Relief dated March 3, 2016 (4 pages)

R-10 Commissioner Decision dated March 23, 2016 (2 pages)

R-11 Schedule of tuition rates (1 page)