

New Jersey Commissioner of Education
Final Decision

Board of Education of the Borough of Wood-Ridge,
Bergen County,

Petitioner,

v.

Board of Education of the Borough of Bogota,
Bergen County; Joseph Zarra, Interim Executive
County Superintendent; and L.B., on behalf of M.B.,

Respondents.

Synopsis

Petitioner, the Board of Education of the Borough of Wood-Ridge (Wood-Ridge), appealed the determination of the respondents, the Board of Education of the Borough of Bogota (Bogota) and Joseph Zarra, Interim Executive County Superintendent (Zarra), that L.B. and her minor child are homeless, and therefore Wood-Ridge is the district responsible for providing a free public education for M.B. Wood-Ridge contended that M.B. and L.B. were domiciled in Bogota as of December 2017, making Bogota the district responsible for the cost of M.B.'s education. Bogota filed a request for reimbursement in the amount of \$29,375.95 for cost of M.B.'s education.

The ALJ found, *inter alia*, that: the inquiry here is which district – Wood-Ridge or Bogota – must bear the cost of M.B.'s education pursuant to *N.J.A.C.* 6A:17-2.8; L.B. established a permanent residence in Bogota when she moved in with her sister-in-law in December 2017; L.B.'s intent to make Bogota her domicile was evidenced by her actions in withdrawing M.B. from Wood-Ridge and transferring him to Bogota schools, planning to sign the lease on the property, cleaning and painting the home, and changing her driver's license to reflect the Bogota address; however, L.B. was forced to leave the Bogota house in February 2018 because of mold in the basement, which had sickened her son; a subsequent falling out with her sister-in-law made it impossible to move back to the home; L.B. subsequently lived in hotels or with friends until February 2019, when she signed a lease in Hackettstown. The ALJ concluded that, while a homeless child may be "deemed" domiciled after living in a district for one year under *N.J.S.A.* 18A:38-1(d), L.B.'s domicile was established by her intent at the time she moved into the Bogota house. Accordingly, the ALJ reversed Zarra's homelessness determination, denied Bogota's request for reimbursement of M.B.'s education costs, and determined that Bogota would remain financially responsible for the cost of M.B.'s education until L.B. established a new domicile outside the district.

Upon review, the Commissioner found the respondents' exceptions to be without merit and concurred with the ALJ that L.B. became domiciled in Bogota when the family moved in with L.B.'s sister-in-law in December 2017 and was no longer homeless; therefore, Bogota became the district responsible for the cost of M.B.'s education in December 2017. In making her determination, the Commissioner noted, *inter alia*, that when a child's dwelling becomes fixed, regular and adequate, domicile attaches immediately. Further, homelessness determinations require a fact-specific analysis that includes the intentions of the parents or guardians. *M. O'K. v. Board of Education of the Borough of Cresskill, et al*, Commissioner Decision No. 325-14, decided August 12, 2014 at 3, *aff'd*, A-0828-14T4 (App. Div. Sept. 8, 2016). Accordingly, the Initial Decision of the OAL was adopted 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.

December 21, 2020

New Jersey Commissioner of Education

Final Decision

Board of Education of the Borough of Wood-Ridge, Bergen County,

Petitioner,

v.

Board of Education of the Borough of Bogota, Bergen County; Joseph Zarra, Interim Executive County Superintendent; and L.B., on behalf of minor child, M.B.,

Respondents.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by respondent Bogota Board of Education (Bogota) and respondent Joseph Zarra, Interim Executive County Superintendent (Zarra), pursuant to *N.J.A.C. 1:1-18.4*, and the replies thereto filed by petitioner Wood-Ridge Board of Education (Wood-Ridge).

This matter involves a homelessness determination regarding L.B. and her minor child, M.B. L.B. was domiciled in Wood-Ridge with her mother until November 2016, when the home was sold following her mother's death. Thereafter, L.B. stayed with friends and at hotels until December 2017, when she moved into her sister-in-law's Section 8 home in Bogota. L.B. and M.B. each had their own room in the four-bedroom house, and they shared a private bathroom upstairs. L.B. cleaned and painted the home's interior prior to moving in and changed her driver's license to reflect her new address. L.B. testified that her goal was to provide

stability for her son and she hoped that it would be a “permanent, semi-permanent situation” so that he could finish 8th grade and have four consecutive years of high school. (Testimony of L.B., T37-38, 45).¹ L.B.’s sister-in-law advised that she would be added to the lease in January 2018. Accordingly, L.B. signed a Student Transfer Card to remove M.B. from Wood-Ridge and enrolled him in Bogota schools.²

A few weeks after moving in, L.B. learned that her sister-in-law was not upfront about the lease, and that the Section 8 landlord would not add L.B. to the lease until March 2018, when it was up for renewal. However, around February 2018, M.B. became sick from mold in the basement, causing the family to vacate the home so that the problem could be remediated. Due to disagreements with her sister-in-law, L.B. never returned to the Bogota home except to retrieve her belongings. The family again lived in hotels or with friends until February 2019, when L.B. signed a lease in Hackettstown.

The issue in this matter is whether the family established a domicile when they moved into the Bogota home in December 2017, or whether they remained homeless from the time they moved out of the Wood-Ridge home in November 2016 until they became domiciled in Hackettstown. The purpose of this inquiry is to determine which district must bear the cost of M.B.’s education, pursuant to *N.J.A.C. 6A:17-2.8*. If the family was homeless the whole time, Wood-Ridge would be responsible for the cost of M.B.’s education from 2016 until the family established a domicile in Hackettstown; but, if L.B. had in fact established a domicile in Bogota, then Bogota would take over responsibility for the cost of M.B.’s education beginning in December 2017.

¹ This citation refers to a transcript of a hearing held before the OAL on February 4, 2020.

² M.B. attended an out-of-district placement in Ridgefield while enrolled at Wood-Ridge. He continued to attend that placement while enrolled at Bogota until March 2018, when Bogota transferred him to the Windsor Learning Academy.

Following Bogota's request for a homelessness determination, Zarra issued a letter on July 26, 2018 finding that "the family had not established permanent residence in Bogota" because they had not resided in any town for at least one year. (Zarra letter, July 26, 2018). Accordingly, "[a]s the family has not met the one-year threshold, financial responsibility is still attached to the last district of residence, Wood-Ridge." *Id.* Wood-Ridge appealed that determination and Bogota filed a counterclaim for \$29,375.95 in education costs.

Following a hearing on the merits that included the testimony of L.B., Zarra, and a representative from each district, the Administrative Law Judge (ALJ) found that L.B. established a permanent residence in Bogota when she moved in with her sister-in-law because she intended to make the house her permanent home. Specifically, the ALJ explained that L.B. transferred M.B. to Bogota's schools, intended to sign the lease, cleaned and painted the home, and changed her driver's license to reflect the Bogota address. The ALJ further noted that but for the mold and subsequent falling out with her sister-in-law, L.B. intended to provide a fixed, permanent home for her son to graduate from high school in four years. While a homeless child may be "deemed" domiciled after living in a district for one year under *N.J.S.A.* 18A:38-1(d), the ALJ found that L.B.'s domicile was established by her intent at the time she moved into the Bogota home. Accordingly, the ALJ reversed Zarra's homelessness determination, denied Bogota's request for reimbursement of M.B.'s education costs, and determined that Bogota would remain financially responsible for the cost of M.B.'s education until a new domicile is established outside the district.

In its exceptions, Bogota argues that the ALJ erred in considering L.B.'s intent. According to Bogota, the ALJ quoted an outdated version of the regulation that defines domicile for student residency – *N.J.A.C.* 6A:22-3.1(a)(1) – when he said that a student's domicile is the

school district where the student's parent or guardian has a permanent home, such that "the parent or guardian intends to return to it when absent and has no present intent of moving from it." Bogota points out that *N.J.A.C. 6A:22-3.1(a)(1)* now provides that "a student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the district," without any reference to intent. Moreover, Bogota contends that the ALJ failed to address case law governing homelessness, specifically *Board of Education of the Township of Egg Harbor v. Board of Education of the Mainland Regional High School District*, EDU 6680-09, Initial Decision (October 15, 2010), *adopted by Commissioner's Decision No. 555-10*, decided December 30, 2010, which Bogota contends stands for the proposition that traditional elements of domicile do not apply to homeless families, and they instead become domiciled after one year residing in a district. Citing *Egg Harbor*, Bogota explains that homeless families have limited choices in where to live, so their "actual intentions, as opposed to their viable choices, must be reconciled"; as such, determining tuition based solely on intent is "arbitrary and unworkable." *Id.* Finally, Bogota raises a slew of minor errors it contends the ALJ made, such as typographical mistakes, that demonstrate the ALJ misunderstands the facts and law at issue. Accordingly, Bogota requests that the Commissioner reject the Initial Decision, reinstate Zarra's homelessness determination, and order Wood-Ridge to reimburse Bogota for the cost of M.B.'s education in the amount of \$29,375.95.

Similarly, in his exceptions, Zarra argues that the ALJ erred in determining that M.B. was no longer homeless when the family moved to the Bogota property for a matter of weeks. Zarra also cites *Egg Harbor*, arguing that the ALJ incorrectly relied on L.B.'s intent to make the Bogota home her permanent residence because the intent of a homeless family is not dispositive in determining homelessness. Zarra contends that when L.B. moved in with her

sister-in-law, M.B. was still homeless in accordance with *N.J.A.C. 6A:17-2.2(a)(3)* because they were staying with family, and despite L.B.'s intention to remain permanently, she only stayed there a period of weeks. Zarra maintains that as L.B. did not live at the Bogota residence for a year, she was not deemed domiciled in Bogota. As such, Zarra contends that his homelessness determination was correct and the ALJ erred in finding that financial responsibility for the cost of M.B.'s education switched to Bogota.

In reply, Wood-Ridge argues that the ALJ correctly found that it does not take a year to establish a domicile, and the one-year threshold only applies when a permanent residence has not been established. Wood-Ridge further contends that intent is the decisive factor in establishing domicile and the ALJ properly found that L.B. intended to make the Bogota residence her permanent home. While Bogota and Zarra rely on *Egg Harbor, supra*, Wood-Ridge maintains that it was only an Initial Decision rather than a Final Agency Decision, and nevertheless was superseded by the Commissioner in *State-Operated School District of the City of Camden v. C. Ann Volk, Executive County Superintendent, et al*, Commissioner's Decision No. 106-16, decided March 18, 2016, in which the Commissioner found that the intentions of the parents are relevant in homelessness determinations. Accordingly, Wood-Ridge urges the Commissioner to adopt the Initial Decision in its entirety.

Upon review, the Commissioner concurs with the ALJ's conclusions that L.B. became domiciled in Bogota when she moved in with her sister-in-law because she intended to make it her permanent home; her actions in connection with the move further demonstrate those intentions; and the living arrangement was fixed, regular and adequate. Accordingly, Bogota became financially responsible for the cost of M.B.'s education from December 2017 until the family establishes a new domicile outside the district.

In matters such as this, the threshold inquiry is whether the child is considered homeless. Under the McKinney-Vento Act, homeless children are defined as “individuals who lack a fixed, regular and adequate nighttime residence,” which includes “children sharing housing with other persons due to loss of their own housing, economic hardship, or a similar reason.” 42 *U.S.C.A.* § 11434a. Similarly, under state law, homeless children are defined as “child[ren] or youth who lack[] a fixed, regular and adequate residence pursuant to *N.J.S.A.* 18A:7B-12 and *N.J.A.C.* 6A:17-2.2,” which includes children living in the “residence of relatives or friends where the homeless child resides out of necessity because his or her family lacks a regular or permanent residence of its own.” *N.J.A.C.* 6A:17-1.2 and 2.2 (emphasis added). When a child’s dwelling becomes fixed, regular and adequate, domicile attaches immediately. *Egg Harbor, supra*, Commissioner’s Decision No. 555-10 at 4.

Thus, conducting a homelessness evaluation to determine whether a child’s home is considered fixed, regular and adequate requires a fact-specific analysis and “cannot rest upon a simple calculation of the amount of time that children have spent in a particular location or municipality.” *M. O’K. v. Board of Education of the Borough of Cresskill, et al*, Commissioner Decision No. 325-14, decided August 12, 2014 at 3, *aff’d*, A-0828-14T4 (App. Div. Sept. 8, 2016). In conducting such a fact-specific inquiry, the Commissioner must consider the totality of the circumstances, such as “[t]he reasons for the children’s homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant.” *Ibid.*

Once it is determined whether a child is homeless, the question becomes which district is financially responsible for the child’s education. Ordinarily, a student is eligible for a free public education in a school district if he or she is domiciled within the school district. *N.J.S.A.* 18A:38-1(a); *N.J.A.C.* 6A:22-3.1(a). A student’s domicile is determined by the domicile

of his or her parents. *N.J.A.C.* 6A:22-3.1(a)(1). When a child becomes homeless, the school district of residence – *i.e.*, the school district in which the child resided before becoming homeless – remains responsible for the cost of the child’s education, including when the child is temporarily living and attending school in another school district. *N.J.A.C.* 6A:17-2.3; *N.J.S.A.* 18A:7B-12. However, when a homeless child lives in a school district for one year or longer – and a new domicile has not been established – the child is “deemed domiciled” in that district for the purposes of determining which district is responsible for the cost of the child’s education. *N.J.S.A.* 18A:38-1(d); *N.J.A.C.* 6A:17-2.3(c).

Here, the Commissioner finds that L.B. became domiciled in the Bogota home upon moving in and was therefore no longer homeless. Not only did L.B. testify that she intended to make the Bogota home a “permanent, semi-permanent situation” so that M.B. could finish 8th grade and have four consecutive years of high school, but her actions also confirmed her intent to make the home her permanent residence. She cleaned and painted the home, switched her son’s school district to Bogota, and changed the address on her driver’s license to reflect her new address. She also intended to be added to the lease, as her sister-in-law told her that she would be added in January 2018. Additionally, the living arrangements support a finding that the home was a fixed, regular and adequate nighttime residence. The home consisted of four bedrooms, so L.B. and M.B. each had their own bedroom and shared a private bathroom. While they were residing in the home of a family member, it was not solely out of necessity; L.B. made the decision to move into that home as a permanent residence to provide long-term stability for her son. Accordingly, as domicile attaches immediately when a child’s dwelling becomes fixed, regular and adequate, the Bogota home became M.B.’s domicile in December 2017. The unfortunate events that occurred following that time, which ultimately

resulted in the family becoming homeless again, do not change the fact that they had already established a domicile in the Bogota home. As such, Bogota became responsible for the cost of M.B.'s education beginning in December 2017.

The Commissioner does not find the exceptions filed by Bogota and Zarra to be persuasive. Bogota argues that *N.J.A.C.* 6A:22-3.1(a)(1) removed the reference to intent from the regulation that defines domicile for student residency matters, which demonstrates that intent is not a relevant consideration. While *N.J.A.C.* 6A:22-3.1(a)(1) previously provided that a student's domicile is the school district where the student's parent or guardian has a permanent home, such that "the parent or guardian intends to return to it when absent and has no present intent of moving from it," it now states that "a student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the district." The Commissioner notes that when the rule was amended in 2013, the Rule Proposal explained why the word "permanent home" was changed to "domicile" and why the definition of permanent home (indicating an intent to return and no present intent of moving from) was removed. 45 *N.J.R.* 1209(a) (May 20, 2013). "Domicile is a legal term of art that encompasses the term 'permanent home' and is more appropriate[.]" *Ibid.* The Rule Adoption further explained that "[t]he definition of 'domicile' does not need to be included in the chapter as it is a term of art and is well defined in case law." 45 *N.J.R.* 2551(a) (December 16, 2013). As the term "domicile" is widely known to rely on an individual's intent, it is relevant in the student residency context as well. Moreover, the Commissioner has previously found that the intentions of the parents are also relevant in conducting a homelessness determination. *M. O'K., supra*, at 3; *see also Volk, supra*, Commissioner's Decision No. 106-16 (remanding a homelessness matter because a

“comprehensive, fact-specific examination of the family’s circumstances” is required to determine whether the child is homeless).

The Commissioner further disagrees with Bogota and Zarra that a “one-year rule” replaces the traditional elements of domicile for homeless students. *N.J.S.A.* 18A:38-1(d) provides: “Any person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district for the purposes of this section.” (emphasis added). Accordingly, while a homeless child may be deemed domiciled in a district after residing in that school district temporarily for one year or longer, the family may establish domicile prior to one year. As such, the “one-year rule” will only deem a homeless child to be domiciled within a school district if he or she has not already established a domicile.

Finally, the Commissioner disagrees with Bogota and Zarra that the Initial Decision in *Egg Harbor, supra*, is controlling. The Initial Decision notes that in analyzing the circumstances of homeless families, “their actual intentions, as opposed to their viable choices, must be reconciled,” and, as homeless families may live in places for short times, tuition cannot be allocated solely on intent. *Id.* However, the Commissioner’s Decision makes no reference to any limitation on intent in a homelessness determination, and instead states that “domicile attaches immediately if a student’s dwelling is found to be fixed, regular and adequate.” *Egg Harbor, supra*, Commissioner’s Decision No. 555-10, at 4. Furthermore, subsequent to *Egg Harbor*, the Commissioner has made clear that homelessness determinations require a fact-specific analysis that includes the intentions of the parents or guardians. *M. O’K., supra; Volk, supra*, Commissioner’s Decision No. 106-16; *State-Operated School District of the*

City of Camden v. C. Ann Volk, Executive County Superintendent, et al, Commissioner's Decision No. 172-17R, decided June 20, 2017; *J.G., on behalf of minor children, T.G. and C.G. v. Board of Education of the Township of Edison, et al*, Commissioner's Decision No. 125-20, decided June 15, 2020.

Accordingly, the Initial Decision of the OAL is adopted. Bogota is directed to assume the financial responsibility for M.B.'s education from December 2017 until M.B. is domiciled outside of Bogota. Bogota's counterclaim for reimbursement of M.B.'s education costs is dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 21, 2020
Date of Mailing: December 24, 2020

³ 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 16570-18

AGENCY REF. NO. 201-8/18

**BOARD OF EDUCATION OF THE
BOROUGH OF WOOD-RIDGE,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE
BOROUGH OF BOGOTA, BERGEN
COUNTY, JOSEPH ZARRA, INTERIM
EXECUTIVE COUNTY SUPERINTENDENT**

and L.B. o/b/o M.B.,

Respondents.

Daniel L. Roberts, Esq., for petitioner (Kenney, Gross, Kovats & Parton,
attorneys)

Alyssa K. Weinstein, Esq., for respondent Borough of Bogota (Scarinci
Hollenbeck, attorneys)

Michael Czarnecki, Deputy Attorney General, for respondent Joseph Zarra,
Executive County Superintendent (Gurbir S. Grewal, Attorney General for
New Jersey, attorneys)

L.B., on behalf of **M.B.**, appearing Pro Se.

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

STATEMENT OF THE CASE

Petitioner the Borough of Wood-Ridge Board of Education (Wood-Ridge or petitioner) claims that respondent, Borough of Bogota Board of Education (Bogota or respondent) was responsible for providing a free public education to M.B., the child of L.B. beginning December 5, 2017. Wood-Ridge claims M.B. and L.B. were domiciled in Bogota as of that date.

Respondents Bogota, Joseph Zarra, the Interim Executive County Superintendent of Schools, (County Superintendent/Zarra) who made the decision that Wood-Ridge is responsible for M.B.'s public education, and L.B., the mother of M.B. all claim that because L.B. and M.B. never lived in Bogota at a permanent address for more than 12 months before attending public school in Bogota, that Wood-Ridge, where M.B. was educated since 2009, and where they last had a fixed address, remained responsible for M.B.'s public education, even after they moved to Bogota. Accordingly, they seek reimbursement of \$29,275.95 plus interest plus an order compelling petitioner to assume financial responsibility for a December 2019 out of district School invoice for retroactive tuition for M.B. and for any additional tuition charged by any entity providing education to M.B. during M.B.'s and L.B.'s alleged homelessness.

Because of the reasons that follow, I have determined that the Bogota Board of Education is the financially responsible district, and reverse the Superintendent's decision, and order that all of M.B.'s public education costs as of December 5, 2017 is Bogota's.

PROCEDURAL HISTORY

For approximately a year prior to December 5, 2017, L.B. and M.B. had moved from place to place, including at least twice residing outside Wood-Ridge, after L.B.'s mother house in Wood-Ridge was sold in November 2016. M.B. had been publicly educated in Wood-Ridge since 2009. However, on December 5, 2017, L.B. signed a student Transfer Card (J-6) stating that M.B.'s last day at Wood-Ridge elementary school was December 5, 2017. On December 12, 2017, Bogota Public Schools registered M.B. as a student of the Bogota School system. Student Registration Form (J-9). L.B. signed the form which contained her new address in Bogota. The form noted that also living at the home in Bogota with M.B.'s aunt. Attached to the form was L.B.'s driver's license showing L.B.'s address to be the same as the address as described on the Student Registration Form.

On June 1, 2018, Jill Connolly, the Supervisor of Pupil Education for Bogota wrote a letter to Superintendent Zarra "to determine the district of origin" of M.B. (J-12). The letter noted that although L.B. reported that she resided in Bogota with her sister, at her sister's house and that she was cosigning the lease, Ms. Connolly was not satisfied that M.B. and L.B. were not still homeless. Ms. Connolly's letter informed the Superintendent that it was her understanding that the last "permanent address" of L.B. and M.B. was a house in Wood-Ridge which was sold in November 2016, after L.B.'s mother died. The letter further stated that L.B. and M.B. had to vacate their home leased by her sister in March 2018 after the discovery of mold. However, L.B. informed Ms. Connolly that although temporarily displaced from their Bogota home, she intended to move back once the mold was remediated or move to another home in Bogota. However, a month later L.B. reported to Ms. Connolly that she had not located another

residence in Bogota, that she was not returning to the Bogota home belonging to her sister because of a family conflict and was temporarily staying at a motel in Whippany.

On July 26, 2018, County Superintendent Zarra wrote a letter (J-18) to the Bogota Superintendent of Public Schools that he determined M.B. was a “homeless child”, pursuant to N.J.A.C. 6A-17-2.2. in that he lacked a “fixed regular and adequate nighttime residence” pursuant to said regulation and to N.J.S.A. 18A-78.12, because since November 2016, when they had their last permanent residence in Bogota, M.B. and L.B. had not lived in any other district for the “required “12 months or more” (citing N.J.S.A. 18A-38-1(d).) Accordingly, in his determination, Wood-Ridge remained financially responsible for M.B.’s public education.

On August 9, 2018, Damian Kennedy Superintendent of Schools for Bogota wrote a letter (J-19) to his counterpart Superintendent Cipriano of Wood-Ridge informing him of Superintendent Zarra’s determination, and attaching Superintendent Zarra’s letter and further advised that although Wood-Ridge was appealing that decision, Wood- Ridge was responsible for monies expended by Bogota as of that date for M.B.’s public education, in the amount of \$29,375.95. and that Wood-Ridge remains financially responsible for M.B.’s continued placement and program. This appeal ensued by an Amended Petition of Appeal by Wood-Ridge, filed on or about September 1, 2018.

FACTUAL FINDINGS AND DISCUSSION

At the hearing, Wood-Ridge offered testimony of Silvia Ragueso, the Director of Student special Services and L.B., the mother of M.B. Bogota offered the testimony of County Executive Superintendent Zarra, and Jill Connolly, the supervisor of People Personal Services for the Bogota BOE.

Preliminarily, all of the facts as recounted in the Procedural history were either not contested or are not disputed. Further, based upon a review of the testimony and the documentary evidence presented, and having an opportunity to observe the demeanor of the witnesses and assess their credibility, I find the following additional **FACTS** to have been established as set forth below.

M.B. and his mother L.B. had been unsettled in any one domicile for approximately a year commencing when L.B.'s mother's home was sold in November 2016, following L.B.'s mother's death. At times, the mother and child stayed in some places outside the district, such as North Arlington and Hackensack, while M.B. continued to attend Wood-Ridge, and while L.B. continued to have contact with Wood-Ridge schools, including advising them of her whereabouts. In early December 2017, Ms. Ragueso learned of a bus location transfer pending for M.B. Ms. Ragueso contacted L.B. by phone and L.B. advised Ms. Ragueso that she and M.B. were moving to her sister or sister in law's⁴ house in Bogota. Although L.B. was questioned if she had a lease, L.N. advised Ms. Ragueso that she would be living with her sister who had lived in this four-bedroom home for several years, and that L.B. would be added to the lease the following month, in January 2019. She also provided Ms. Ragueso a copy of her current driver's license which used her sister's address in Bogota as L.B.'s address. Ms. Ragueso testified that L.B. was excited that she had found a stable home environment for her and M.B. after a period of effective homelessness. She detailed the new living conditions where she and L.B. would have their own bedrooms, and bathroom, that she would pay rent to her sister until she was added to the lease, and that she also intended to help her sister, who had some disabilities, with needed transportation at times. Following this interaction with Ms. Ragueso, L.B. signed the aforementioned Student Transfer Card, containing the new Bogota address. As memorialized in a letter Ms. Ragueso wrote to County Executive Superintendent Zarra, L.B. told Ms. Ragueso that "she was excited to be back on her feet again and to finally have a permanent place to live..." She felt she had done her due diligence in making

⁴ As with many relations, it appears L.B. referred to her relative in Bogota, at times as her sister, when in fact she was her sister in law. She also described her sister in law as M.B.'s "aunt." For brevity, this relative is referred to herein as "sister" to L.B. or as M.B.'s aunt.

sure the new address with her sister was not a temporary arrangement but intended to be permanent. However, once L.B. signed M.B. out the school district of Wood Ridge, she never asked L.B. to provide a copy of the lease as it was not required nor their procedure.

L.B. testified that she had decided to live with her sister when her sister asked her to move there in November 2017. L.B.'s sister had a four-bedroom home in Bogotá that was Section 8 qualified and L.B.'s moving there would help her keep her Section 8 status. At the same time, the move to Bogota would provide L.B. with an affordable rent and, in her words "stability for my son." In addition to rent, she had also agreed to help her sister with her disabilities, by example providing transportation for doctor's appointments. L.B. arranged for her mail to be sent to the house in Bogota. Further, she paid for several improvements to the home before moving in such as some "updates" cleaning and "painting all of it." In directly responding to the question posed by Wood-Ridge "So when you moved in Bogota how long did you intend to stay there?" L.B. replied that when she moved, she "hoped" it would be "like a permanent-semi permanent situation at least to get [her son] into high school." ⁵

Additionally, L.B. responded that her sworn to answers to Interrogatories were "the truth." One interrogatory had asked "(F)or how long did you plan to stay at that [Bogota] address?" L.B. replied "Two years max originally, and then till he [M.B.] finished and we were stable to have four consecutive years of high school."

L.B. then recounted a number of reasons why, although her intentions were to originally to permanently reside with her sister in Bogota, the living arrangements soon deteriorated. For one, her sister wasn't as forthcoming as she should have been when she claimed that L.N. could co-sign the lease as early as January. L.B. soon learned that the landlord's and the Section 8 approval would not come until March. Further, in March, M.B. became ill and it was determined this was owing to mold in the house's basement which had to be remediated. Nevertheless, and although some of these

⁵ M.B. was in the 8th grade when they moved to Bogota.

problems began just weeks after moving in, L.S. was asked directly, “But after you had moved in before you stayed there for weeks and it was your intention to remain there correct?” Her reply was “Yeah Yeah.”

Under cross-examination, L.B. at times appeared to equivocate by modifying the description of her “intent” by adding or substituting the word “hope” for “intent” saying, for example it was always her “hope” the move would be permanent. Her problem was that after she moved in “I didn’t have anything in hand saying that it was going to be what it is [meaning as negotiated with her sister]. So I was always careful of the fact of saying I’m hopeful form and I was pushing for it , but....”

In any event, although she initially waited for the mold remediation to move back in with her sister, they began to fight and at some point, the sister locked her and M.B. out the house, so she and M.B. never returned there except to move out their property.

L.B. kept M.B. in the Bogota school until his June 8th grade graduation, although by this time she had moved in temporarily with a friend in Hackensack, as she had a year before. L.B.’s testimony heaped praise upon Bogota’s BOE. She testified they were “Very gracious, Very professional”. They were honest with me as far as you know, like what they needed and I was honest with them back saying I have it until a certain time, but they put the child first and the child’s needs first and they took him in regardless and they did a reval and re-placed him, So they went far and beyond for my son”. She contrasted this from what can only be called somewhat cold treatment she received from Wood-Ridge of whom she said: “I was notified by Ridgefield (an out of district placement Wood-Ridge had previously paid for) through Wood-Ridge early in December that M. could not attend [XX] school . He could not go back to his— removed...They hadn’t even had it official through me yet and I had that phone just saying he couldn’t come back and he never got his property back from the [XX] school either.” I find that L.B.’s opinion of the Bogota BOE and the Wood-Ridge BOE may account for her equivocation in appearing to deflect the use of the word intent by attempting to distinguish her intent from what she said her “hope” was.

On redirect however, L.B. was asked:

Q' When you moved into the house in Bogota did you ever have any knowledge that [your sister] had any issues with her lease at that time?.

Her answer, in pertinent part was:

A (W)ell no. .Actually when she asked me to in she told me that she would have to contact the landlord and have me added to her lease, okay she didn't give me any inclination there was a problem".

To elaborate, L.B. explained that the problem with the lease "came to light" subsequent to moving in. The questioning continued

Q : And when you had initially moved in, it is fair to say you had intended to stay there at least two years.

A: Yeah. I was hoping.

Later to the Court's questioning about L.B.'s intent, she stated:

A: I started the end of November going in there cleaning and painting and making it ready for us to move in, so I cleaned the entire house

Q : Because you intended to reside there [?]

A: Because we intended to yes, yes because this was going to be the home we were going to make...So we intended to stay there, you know that was the plan.

Bogota called fellow respondent Joseph Zarra to establish the basis for his determination that M.S. became homeless in November 2016 and had remained homeless even after relocating with his mother to Bogota. He stated.

A: [C]ommon sense would indicate that a child that has been moved from home to home with no permanent address and many times living with someone under the same roof is not – it is not their home. And in this case if I may, the child

moved many times in a period...I believe it was nineteen months.

Q: Do you consider the physical nature of the home?

A: No we don't have the investigative ability to go in and determine that

Q: Do you consider whether the home is fixed, regular and adequate?

A: We do not

Superintendent Zarra continued:

Q: How does one establish domicile, in your understanding?

A: In our interpretation domicile is a home where a child resides that is permanent, and we didn't see that.

Q: So, it is fair to say that if a child moves from town to town, they wouldn't be considered domiciled there until they spent one continuous year there?

A: I think it's fair to say that, yes.

Q: Could a person intentionally move from one town to another to establish domicile there?

A: We would have no idea.

Q: So today, you don't know if that person's is relevant to establishing domicile?

A: Intention to my knowledge does not come into it.

Mr. Zarra also stated it is not their policy to get statements or information from the parents when making a determination of homelessness but instead he relies exclusively on letters provide to him by the districts. While Superintendent Zarra stated that homeless means a "child or youth who lacks a fixed regular and adequate nighttime residence," he also insisted they never consider factors such as the living arrangements at the house like whether the child has a separate bedroom and other specifics of the living arrangements. Yet somewhat inconsistently, he testified he did consider that L.B. was supposed to be added to the lease.

When questioned about whether this so called one-year time requirement was uniformly enforced by all school districts, Superintendent Zarra explained.

A: (T) hat really varies from school district to school district. There are some school districts that are sticklers and until the family establishes permanent residence, they really won't entertain registering the child. Other school districts if evidence is presented that for example they're going to close on the house and they have a letter from the realtor, letter from the seller or the attorney, they'll allow each child to register. So again, it really is up to each individual school district how they handle that.

Q Okay, So the fact that the child has not resided in that district for twelve months or more is not a uniform rule to give guidance to the district as to whether or not that child is entitled to a free education in that district?

A: I don't believe so.

LEGAL ANALYSIS AND CONCLUSION

N.J.S.A. 18A:38-1(a) and N.J.A.C. 6A:22-3.1(a) sets forth the right of a student to a free public education, which in pertinent parts states:

Public schools shall be free to the following persons over five and under twenty years of age:

a. Any person who is 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).

The domicile of an unemancipated child is that of his parent, custodian or guardian. 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); P.B.K. o/b/o minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super 419, 427 (App. Div. 2001).

A student's "domicile" is where the student's parent or guardian has a permanent home in the school district such that "the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere." N.J.A.C. 6A:22-3.1(a)(1); State v. Benny, 20 N.J. 238, 250 (1955); 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). Put another way, the Appellate Division has long held that a person's domicile is "the place where [a person] has his [or her] true fixed permanent home and principle establishment and to which whenever he [or she] is absent he [or she] has an intention of returning," and from which he {or she] has no intention of moving. D.L., 366 N.J. Super at 273 (quoting T.B.W. ex rel A.W. v Bd. of Educ. Of Bellville, EDU 5959-96 (April 20, 1998) <http://njlaw.rutgers.edu/collections/oal/>). Intent is the decisive factor in establishing domicile. A person's intent converts a residence from a mere place in which a person lives to a domicile. State v Benny, 20 NJ at 251.

Here, however, it is argued by all the respondents that regardless of their intent, L.B. and M.B. remained "homeless" throughout December 2017 and the remainder of the 2018 school year because they failed to spend one continuous year in Bogota (or anywhere else) during that time. That misreads the wording and intent of the applicable law.

Petitioner correctly cites the applicable statutes and regulations, where there is a condition of homelessness the last district of residence shall pay another school district the tuition costs. Pursuant to N.J.S.A. 18A: 38-19, however such payments are made by the former district of permanent residence when a homeless child is enrolled in a district other than where the child last resided until the parent establishes a permanent

residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d. At that time, the school district of residence shall no longer pay tuition to the school district of enrollment. N.J.A.C. 6A: 172.8 (emphasis supplied).

Thus, the school district of residence is responsible to pay for the homeless child until that child either becomes domiciled at a location or are “deemed domiciled at a location under N.J.S.A. 18A:38-1 (d)” (emphasis supplied) because they spent one continuous year there. Clearly the statute provides that domiciles may be recognized as existing well before one year and do not require any specific length of time, but rather can be established based on the intent of the persons seeking to establish a domicile.

Here, the Bogota BOE and Superintendent Zarra erred in ignoring all the clear evidence that L.B. intended to make her sister’s house in Bogota her and M.B.’s domicile and did in fact do so when she moved there in December 2017. She had every intention in making this her permanent home, just as she told the Wood-Ridge School representative when she signed M.B. out of the school and had him enroll in Bogota one week after the move. Prior to moving in that December L.B cleaned, painted and fixed up the four-bedroom house to get it ready as a permanent home for her and her son and to live with her sister in a house she intended to co-lease. She changed her driver’s license to reflect her new address. She made an agreement with her sister how to divide costs and intended to co-sign the lease as soon as the landlord presented it. The fact that L.B. wanted to co-sign the lease as early as January 2018 but the landlord advised that he needed Section 8 approval and would add her to the lease in March of 2018 did not change L.B.’s intent when she decided to move to that address in Bogota. Further, she did not leave the address on her own volition. It is undisputed that even when she and her son left the house probably in March 2018 while mold was being remediated, she testified she intended to return there. It is only when she began fighting with her sister and got locked out in April 2018 did she give up on the house and became homeless again.

Respondent would have us completely ignore the intention (or “hope”) of L.B. to establish, when she moved in to move in with her sister to have a permanent place for at least until her son could graduate from high school in four years. Despite a few somewhat modest complaints, L.B. did not abandon the domicile until she was locked out four months after by her sister. Superintendent Zarra testified “intention” has nothing to do creating a domicile. Conversely, he conceded that whether a child stays one year or more at a certain residence provides “no guidance” to the district in the determination of whether that district has to provide that child with a free public education, and that the duration of the stay at a residence provides no uniform guidance to the districts. I cannot agree on either count. Whether the rules are not enforced uniformly by the districts does not change the “deemed” section of the applicable section, and The Executive Superintendent’s disregard for the intention to create a domicile was clearly a misreading of the statute and its intent.

Clearly the preponderance of the evidence shows that when L.B. moved to her sister’s four bedroom home in Bogota, was the place she found and determined to be, after a period of about a year of homelessness, a “fixed permanent home and principle establishment and to which whenever she was absent (e.g. like when she became absent in about March 2018 because of the mold) she had the intention of returning to and from which he she had no intention of moving. A domicile may be acquired upon the “concurrence, even for a moment of physical presence at a dwelling place with the intention of making it a permanent abode.” Lyon v Glaser, 60 N.J. 259,264 (1972). Further as a matter of law, the “deemed domiciled” provision of N.J.S.A. 18A:38-1(d) was misread or misinterpreted by the Respondents to impose a 12 month minimum as a *sine qua non* requirement to establish the domicile of a previously homeless child. As evidenced by the clear wording and intent of the statute, the 12- month requirement simply deems the domicile to have been created without further proof being needed. Here, petitioners showed by a preponderance of the evidence the further proof of that intent to create the domicile in Bogota.

CONCLUSION

Based on the letter of determination by Superintendent Zarra, Bogota has charged Wood-Ridge with the cost Bogota expended for educational costs of M.B. from the time he registered with their school district in December 2017 until his graduation in June 2018, in the amount of \$29,375.95, and requests an order that Wood-Ridge continues to pay the cost of M.B.'s public education until L.B. and M.B. establish a new domicile. However, as shown, Bogota's demand must be denied as it was based on an arbitrary and capricious finding which ignored the fact that L.B. and M.B. clearly established a new domicile in Bogota commencing in December 2017. Consequently, the Superintendent's decision is **REVERSED**, and Bogota's demands for payment and other relief are **DENIED**. Further, Bogota continues to be financially responsible for M.B.'s public education costs until such time as their new domicile is established outside the district.

ORDER

Based upon the foregoing, it is **ORDERED** that the decision by the County Executive Superintendent of Schools that M.B. and L.B. did not establish a domicile in Bogota and remained homeless is **REVERSED**, and the claims by Bogota for reimbursement for the costs of M.B.'s public education between December 2017 and June 2018, and for the demand for prospective relief ordering Wood-Ridge to pay the financial costs of M.B.'s public education until such time as they establish another domicile is **DENIED**. It is further ordered that Bogota continues to be financially responsible for M.B.'s public education until such time that L.B. and M.B. establish a domicile outside of Bogota.

I hereby **FILE** my 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 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 08625-500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 5, 2020



DATE

ERNEST M. BONGIOVANNI

Date Received at Agency:

8/5/20

Date Mailed to Parties:

id

APPENDIX

LIST OF WITNESSES

For Petitioners

Sylvia Ragueso

L.B.

For Respondents

Joseph Zarra

Jill Connolly

LIST OF JOINT EXHIBITS IN EVIDENCE

J-1 through J-5 NOT IN EVIDENCE

- J-6 Student Transfer Card and Verification Form, dated December 7, 2017
- J-7 Emails between Jill Connolly and Silvia Ragueso, dated December 7, 2017
- J-8 Emails between Jill Connolly and Silvia Ragueso, dated December 8, 2017
- J-9 Bogota Public Schools Student Registration Form, dated December 12, 2017
- J-10 Bogota Public Schools McKinney-Vento Student Residence Form-
- J-11 Email between Jill Connolly and Silvia Ragueso, attaching release of records form, dated December 12, 2017
- J-12 Letter from Jill Connolly to Joseph Zarra, dated June 1, 2018
- J-13 Letter from Joseph Zarra to Vincent Varcadipane, dated June 22, 2018
- J-14 Letter from Joseph Zarra to Nicholas Cipriano, dated June 22, 2018
- J-15 Letter from Jill Connolly to Joseph Zarra, dated June 28, 2018
- J-16 Email from Victoria Bauman to Irene Ardizzone attaching correspondence from Nicholas Cipriano and Silvia Ragueso, dated June 28, 2018
- J-17 NOT IN EVIDENCE
- J-18 Letter from Joseph Zarra to Damien Kennedy, dated July 26, 2018
- J-19 Letter from Damien Kennedy to Nicholas Cipriano, dated August 9, 2018
- J-20 Wood-Ridge Board of Education Amended Verified Petition of Appeal, dated September 4, 2018
- J-21 Bogota Board of Education Answer with Affirmative Defense and Counterclaim, dated September 25, 2018
- J-22 NJDOE (Joseph Zarra) Answer to Amended Verified Petition of Appeal with Affirmative Defenses, dated October 9, 2018
- J-23 Wood-Ridge Board of Education Answer to Counterclaim, dated October 10, 2018

- J-24 L.B. responses to Joint Interrogatories, dated July 8, 2019
- J-25 L.B. responses to Zarra's Interrogatories and Requests for Admissions, undated
- J-26 NOT IN EVIDENCE
- J-27 L.B. Lease agreement commencing February 15, 2019
- J-28 L.B' s NJMVC change of address
- J-29 Bogota BOE record of payments to Ridgefield BOE, -March/April 2018
- J-30 Bogota BOE records of payments to D.B. for home instruction- April 2018
- J-31 Bogota BOE records of payment for out of District tuition
- J-32 Correspondence from [X] School to Bogota BOE