

New Jersey Commissioner of Education

Final Decision

A.M., on behalf of minor child, A.S.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that A.S. resides in Hillside with her father, J.S., and is therefore not eligible to receive a free public education in the Elizabeth public schools. The Board sought out-of-district tuition reimbursement for A.S.'s attendance. A.M. contended that A.S. has always resided with her in Elizabeth, but that due to the COVID-19 pandemic, the concomitant switch to remote education, COVID-19 in the family, and A.M.'s work schedule, A.S. attended Elizabeth's remote learning at J.S.'s home in Hillside so that he could provide childcare and assist A.S. with homework and the technology required for remote learning.

The ALJ found, *inter alia*, that: during the 2020-2021 school year, A.S. was enrolled as a kindergartner in the Elizabeth School District; due to the COVID-19 pandemic, instruction was conducted remotely from September 8, 2020 to the week of April 19, 2021; A.S.'s father, J.S., resides in Hillside, and has joint custody of A.S. with A.M.; A.S. participated in remote learning from her father's house in Hillside while A.M. worked, because no one at the Elizabeth address was available to provide childcare and assist A.S. with remote-learning technology; there is no dispute that A.S. resides with A.M. during the school year; petitioner's testimony was highly credible, while the testimony of the Board's witnesses was not; petitioner provided substantial documentary evidence that her legal domicile is in the city of Elizabeth; and the Board's failure to accept A.M.'s reasonable explanations for A.S.'s presence in Hillside for childcare, remote learning, and quarantine purposes during the Covid-19 pandemic was unreasonable and callous. The ALJ concluded that A.M. met her burden of proof that she and A.S. are domiciled in Elizabeth, and that A.S. was therefore entitled to a free public education in the Elizabeth school district; further, the Board is not entitled to any tuition reimbursement under *N.J.S.A. 18A:38-1b(2)*.

Upon review, the Commissioner concurred with the ALJ that the petitioner sustained her burden of demonstrating that she was domiciled in Elizabeth from October 29, 2020 to the present. Accordingly, the minor child, A.S., was entitled to a free public education in the District's schools during that time. The Initial Decision of the OAL was adopted as the final decision in this matter, and the Board's counterclaim for tuition was dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

158-21

OAL Dkt. No. EDU 00255-21

Agency Dkt. No. 242-12/20

New Jersey Commissioner of Education
Final Decision

A.M., on behalf of minor child, A.S.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union 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 review, the Commissioner agrees with the Administrative Law Judge that petitioner sustained her burden of demonstrating that she was domiciled in Elizabeth from October 29, 2020 to the present. As such, the minor child, A.S., was entitled to a free public education in the District's schools during that time.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein. The Board's counterclaim for tuition is dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 2, 2021
Date of Mailing: August 3, 2021

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 00255-21

AGENCY DKT. NO. 242-12/20

**A.M., ON BEHALF OF
MINOR CHILD, A.S.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY
OF ELIZABETH, UNION COUNTY,**

Respondent.

A.M., petitioner, pro se

Christina M. DiPalo, Esq., for respondent (La Corte, Bundy, Varady & Kinsella,
attorneys)

Record Closed: June 15, 2021

Decided: June 16, 2021

BEFORE SARAH H. SURGENT, ALJ:

STATEMENT OF THE CASE

Petitioner A.M., on behalf of her minor child, A.S., challenges the Board of Education of the City of Elizabeth, Union County's (Board's) residency determination that

A.S. resides in Hillside with her father, J.S., and is therefore not entitled to be enrolled in the Elizabeth school district. The Board seeks out-of-district tuition reimbursement accordingly. A.M. maintains that A.S. has always resided with her in Elizabeth, but that due to the COVID-19 pandemic, concomitant remote education, COVID-19 in the family, and A.M.'s work schedule, A.S. attended Elizabeth's remote learning at J.S.'s home in Hillside, so that he could provide childcare and assist A.S. with homework and the technology required for remote learning.

PROCEDURAL HISTORY

A.M.'s pro se petition of residency appeal was timely filed with the Commissioner of Education (Commissioner) on November 20, 2020. (P-2). It was transmitted to the Office of Administrative Law (OAL) and docketed on December 15, 2020, to be heard as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. On January 15, 2021, it was assigned to this Administrative Law Judge (ALJ). After three telephonic conferences on February 11, February 26, and March 11, 2021, a remote plenary hearing commenced via videoconference on April 21, 2021, due to the COVID-19 pandemic. Due to an emergency in this ALJ's family, the continuation of that hearing was carried sua sponte from April 23, 2021, when J.S. was expected to testify, to May 18, 2021, when A.M. then reported that J.S. was unavailable to testify because he had been hospitalized early that morning. The hearing was concluded on that date and the record remained open for post-hearing submissions until June 15, 2021. The Board's written summation was received on May 20, 2021. A.M.'s written summation was received on June 15, 2021, and the record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

Sharon Calixto (Calixto), A.S.'s Elizabeth kindergarten teacher, and William Buteau (Buteau), Investigator for the Board's legal department, testified for the Board. A.M., A.M.'s sister, A.A., and A.M.'s grandmother, M.V., testified on A.M.'s behalf. These salient points are undisputed. I therefore **FIND** the following **FACTS**:

A.S. is five years old. During the 2020-2021 school year, A.S. was enrolled as a kindergartner in the Elizabeth School District. Due to the COVID-19 pandemic, instruction was conducted remotely from September 8, 2020 to the week of April 19, 2021. A.S.'s father, J.S., resides in Hillside, and has joint custody of A.S. with A.M. A.S. participates in remote learning from her father's house in Hillside while A.M. works, because no one at the Elizabeth address is available to provide childcare and assist A.S. with remote-learning technology. A.M.'s grandmother and sister reside in Elizabeth. There is no dispute that A.S. resides with A.M. during the school year. The issue is whether A.M., and thus A.S., are domiciled in Elizabeth or Hillside.

TESTIMONY AND EVIDENCE

Calixto

Calixto testified that she has been a kindergarten teacher for the Board for seventeen years, and that A.S. was one of her students for the 2020-2021 school year. During the 2020-2021 school year, all students were taught remotely due to the COVID-19 pandemic until in-person learning resumed the week of April 19, 2021. During the remote-learning phase, parents who could pick up learning materials during school hours would do so, and for parents who could not pick up those materials due to their own work schedules, Calixto would deliver the materials to the students' homes. "Sometime" in October, Calixto went to the home in Elizabeth to drop off supplies for A.S. She obtained the Elizabeth address from "Power School," which is a database with all students' addresses on file.

Calixto testified that on that day, she called A.M. and asked her if she was home, and that A.M. said "yes." Calixto said "I'm outside," and A.M. purportedly said, "I don't live there, I live a block away." Calixto asked for the correct house number, and A.M. put her on hold. When A.M. came back on the line, A.M. purportedly said "I got nervous. I don't live there. I live . . . in Hillside." A.M. purportedly said that she had not had time to change her driver's license and requested that Calixto leave the materials at the door to

the Elizabeth address where A.M.'s grandmother resides. Calixto left the materials with a note to A.S. that said, "I hope you feel better." According to Calixto, A.M. did not indicate that her change of address was a temporary situation. The next day, Calixto reported to the school principal that A.M. was living in Hillside.

Calixto stated that while she was teaching A.S. remotely, the only parent she ever saw remotely was A.S.'s father, and that A.S. was learning remotely from the same location every day and wore "mostly pajamas." Calixto had no personal knowledge as to whether A.S. slept at that location. Calixto stated that A.S. was absent from remote learning "quite often," for medical reasons, and that A.S. was never considered to be truant. Indeed, A.S. was not "in school" for the entire week of Calixto's visit to the Elizabeth address, due to what Calixto described as a "pandemic-related illness," which A.M. had informed Calixto of. Calixto did not explain why she attempted to have physical contact with A.M. or A.S., knowing that A.M. and A.S. were both ill with a highly infectious and dangerous disease, and that A.S. would not be attending remote learning that week, and therefore did not need the school supplies.

Buteau

Buteau has been an investigator in the Board's legal department for approximately three and one-half years. Prior to that he was an Elizabeth police detective. He is responsible for student residency investigations. He checks public records, does residency checks, and conducts surveillance, if necessary, to determine whether students reside in Elizabeth. He conducted a residency investigation of A.S. and prepared an investigation report and an amended (updated) investigation report of his findings. (R-1; R-7). He did not testify from memory, and constantly referred to and read from his updated report to refresh his recollections. (R-7).

On October 29, 2020, he commenced the investigation based on Calixto's claim that A.M. and A.S. were living in Hillside. (R-7 at 2). Although Calixto testified that A.S. was never truant, Buteau's report indicates that "[t]he investigation was initiated because

of truancy,” and the report references an attendance officer whose referral and testimony were not offered by the Board. Ibid. Buteau stated that he ran an Accurint public records check on A.M., which revealed both the Elizabeth and Hillside addresses at issue. The Hillside address was also associated with A.S.’s father, J.S. Ibid.

Buteau visited the Hillside address on [Friday]¹ October 30, 2020, at an unspecified time. J.S.’s car was in the driveway, and A.M.’s car was not. Ibid. No one answered the door, and he noted that the mailbox had both J.S.’s and A.M.’s names on it. He photographed the house and the mailbox. (R-2 dated 10/30/20).

Because A.M.’s name was on the Hillside mailbox, a Notice of Initial Determination of Ineligibility dated October 30, 2020 (Initial Determination) was sent to A.M. at the Hillside address via UPS with tracking. (R-3). Buteau surmised that A.M. signed for the delivery, because someone had written “11/2/20 signed by [A.]” on the tracking slip. (R-3 at 3). Notably, there is no actual signature on the tracking slip, and the Board did not provide any copy of A.M.’s signature related to that delivery.

The Initial Determination states: “We have determined that your family is not domiciled in the city of Elizabeth. . . . Therefore, we have concluded that in accordance with N.J.S.A. 18A:38-1(A), your child is NOT entitled to attend in the Elizabeth Public School District.” (R-3 at 1). A.M. did not request a hearing before the Board. However, contrary to his report, Buteau neglected to mention that on November 3, 2020, A.M. emailed a completed residency verification form and provided copies of her New Jersey driver’s license, an envelope from the New Jersey Department of Labor and Workforce Development, a printout of unemployment, a letter from Chase bank, a CapitalOne credit card statement, and a lease dated August 1, 2020. (R-7 at 1). None of those documents were provided by the Board to this Tribunal.

¹ Pursuant to N.J.S.A. 52:14B-10(b), I have taken Judicial notice of the days of the week which correspond to Buteau’s report and testimony, as indicated in brackets.

Buteau conducted further surveillance at the Hillside address on [Monday] November 9, 2020, at 11:45 a.m., and saw both J.S.'s and A.M.'s cars in the driveway. (R-7 at 2; R-2 dated 11/9/20). J.S.'s car was registered to the Hillside address and A.M.'s car was registered to the Elizabeth address. (R-7 at 2). Buteau testified that he spoke with J.S., who confirmed that A.S. was present, but further explained that he was watching A.S. while A.M. was at work, and that A.S. did not reside with him, she resided in Elizabeth with A.M. and A.M.'s grandmother. Ibid. Contrary to his report, Buteau neglected to testify that upon informing J.S. that A.M. "said she lived in Hillside," J.S. explained that "there was a big misunderstanding," and that "three weeks ago [A.M., A.S., and J.S.] had COVID and didn't want to spread it to [A.M.'s] grandmother because she is 92 years old so [J.S.] let [A.M. and A.S.] stay with him during that time but they're back in Elizabeth." Ibid.

As a result of that visit, a Notice of Final Ineligibility (Final Determination) dated November 13, 2020 was sent to A.M. at the Hillside address, stating "**YOUR DOMICILE/RESIDENCY IS NOT IN THE DISTRICT. OUR INVESTIGATION REVEALS THAT YOU RESIDE OUTSIDE OF ELIZABETH.**" (R-4 at 1) (emphasis in original). Buteau's report states that that notice was signed for by "DD," (R-7 at 1), but no proof of delivery was supplied by the Board. Contrary to his report, Buteau failed to mention that in response to that notice, on November 19, 2020, A.M. contacted the Office of the Assistant Superintendent to voice her concerns, and also emailed the school Principal. (R-7 at 2). The Board did not present that email to this Tribunal. Buteau's report also notes that on an unspecified date in December 2020, A.M. contacted the Board's legal department and advised someone there that she would be filing an appeal of the residency determination. (R-7 at 1).

Notwithstanding the November 13, 2020 Final Determination, Buteau continued his surveillance, and returned to the Hillside address on [Thursday] November 19, 2020, at 6:15 a.m. (R-7 at 2). Both A.M.'s and J.S.'s cars were in the driveway and covered with frost. (R-7 at 2; R-2 dated 11/19/20). On [Tuesday] January 12, 2021, at 6:30 a.m., Buteau returned to the Hillside address and again noted that both A.M.'s and J.S.'s cars

were in the driveway. (R-7 at 3; R-2 dated 1/12/21). On [Thursday] January 14, 2021, at 7:00 a.m., Buteau returned to the Hillside address and again noted that both A.M.'s and J.S.'s cars were in the driveway. (R-7 at 3; R-2 dated 1/14/21). At 8:15 a.m., A.M. drove out of the driveway. Buteau tried to follow her but could not keep up due to traffic conditions. (R-7 at 3). At 8:45 a.m., Buteau went to the Elizabeth address, knocked on the door, and got no answer. Ibid.

On [Thursday] January 21, 2021, at an unspecified time, Buteau again went to the Elizabeth address and A.M.'s grandmother, M.V., answered the door. She did not speak English and yelled for someone to come to the door. Buteau stated that an unidentified young male came to the door and purportedly explained that A.S. had "just left with her mother to get some groceries. He then called [A.M.] and put her on speaker. [A.M.] told [Buteau] she was at work and [A.S.] was at [J.S.'s] house because [A.M.'s] grandmother could not take care of [A.S.]." (R-7 at 3; R-2 dated 1/21/21). On [Tuesday] February 16, 2021, at 7:00 a.m., Buteau returned to the Elizabeth address and noted three cars in the driveway, none of which were A.M.'s. (R-7 at 3; R-2 dated 2/16/21).

On [Monday] March 22, 2021, at 7:00 a.m., Buteau returned to the Hillside address. (R-7 at 3). J.S.'s car was parked in the driveway, A.M.'s car was parked on the street in front of the house, and each car was covered with frost. (R-7 at 3 and photo dated 3/22/21). On [Monday] March 29, 2021, at 7:05 a.m., Buteau returned to the Hillside address and noted that A.M.'s car was parked in the driveway, and that J.S.'s car was absent. (R-7 at 3 and photo dated 3/29/21). On [Tuesday] April 6, 2021, at 11:22 a.m., Buteau returned to the Hillside address and both A.M.'s and J.S.'s cars were parked in the driveway. (R-7 at 3 and photo dated 4/6/21). On [Wednesday] April 7, 2021, at 6:15 a.m., Buteau returned to the Hillside address and both A.M.'s and J.S.'s cars were parked in the driveway. (R-7 at 3 and photo dated 4/7/21). Buteau testified that throughout his surveillance, he never saw A.M.'s car at the Elizabeth address.

The Board's 2020-2021 Tuition Rates for Out-of-District Students Attending Elizabeth Public Schools indicates that the per diem tuition rate for a kindergartner is

\$69.68. (R-5). Notwithstanding the Board’s residency determination, A.S. is still enrolled in the Elizabeth school district, pending the final outcome of this appeal. The Board is therefore seeking tuition reimbursement from A.M. for the period of October 29, 2020 to present, and for each school day thereafter while A.S. is enrolled in Elizabeth. The Board’s 2020-2021 school calendar indicates that as of the May 18, 2021 hearing date, 101 school days had occurred, and that the school year ends on June 25, 2021. (R-6).

On cross-examination, Buteau contradicted his report about A.S. having been truant, and stated that the truancy officer is a liaison between the Principal and the Board’s legal department. He agreed that the issue of truancy does not apply to this case. He also stated that UPS does not provide copies of signatures, and merely provides information about who signed for a delivered package. However, I note that on the proof of delivery, someone typed in “**Received By [A.]**,” and that the empty signature box below that notation says, “**Signature is not available at this time.**” (R-3 at 4) (emphasis in original). Buteau had no personal knowledge about who wrote “11/2/20 signed by [A.]” on the shipping receipt. (R-3 at 3).

A.M.

In her pro se opening statement, A.M. relied upon and incorporated on the record her signed, notarized version of events, entitled “RE: LETTER PETITION; NOTICE OF FINAL INELIGIBILITY,” dated November 20, 2020, which was sent to the Board’s Legal Department. (P-1). That document states, in relevant part:

What happened:

I, [A.M.], find myself writing this petition to clarify this confusion with my daughter [A.S.], Student ID#[]. On October 9, 2020, I tested positive for [C]ovid-19. I followed guidelines and had my family tested as well. Including my daughter’s father, [J.S.]. He tested positive as well. My grandmother went to get tested and she tested negative[.] SINCE my 88 year old grandmother tested negative the reasonable thing to do was stay away from her while we got better. Since [J.S.] tested positive we quarantined at his house. During our quarantine process, [A.S.’s] teacher Mrs. Calixto called me telling me she

was outside of my home and she just wanted to drop off a dry erase board and also say hi to my daughter. (I was confused at first because I found it unsettling how there was no questions or previous suggestion as to if it were okay to pop up at my home and even so, in who's right mind goes to a persons house knowing they are [C]ovid-POSITIVE) might I mentioned my daughter wasn't attending class either due to our main symptom being headaches. Either way I informed her I wasn't quarantined at home and she could leave it with my grandmother who was home. She proceeded to ask me where I was and I didn't find an issue in letting her know where I was being that it was a temporary stay. Resuming to my first day back to my normal living, we were already back at home & while at work I received an email stating to send in my proof of address, which I did, I sent in all the paperwork the same day. I figured it was a procedure since it's [A.S.'s] first year there. A week later [J.S.] tells me a guy from the board of education popped up at his door asking if [A.S.] was here, which she was since it was 11:30am and she was attending her virtual class in his house while I was at work. I tried many times to reach out to the legal department as it said on the paper "if I had any questions" but wasn't successful since I didn't receive any answer. Exactly a week later, a certified letter was delivered again to [J.S.'s] stating it was a final notice and that they made the decision [A.S.] didn't reside in the school district. Which is where I became baffled with the conclusion since I never had spoke to anyone to explain anything. Never had an investigator come to my ACTUAL home inspect and see the actual truth. In this week I was finally able to get a hold of the legal department and they asked me to follow procedures and if I oppose to file the appeal form. For these reasonings is why I have to appeal to this wrongful decision.

Actual Facts:

[J.S.] and I have a very good co-parenting relationship/agreement. We both share custody of [A.S.] but she lives with me. Due to the obvious conditions we are currently facing I have found it nearly impossible to find a babysitter/tutor for [A.S.]. Coincidentally, as many people in the world [J.S.] was furloughed from his work and since he has been home since before school started, he has been doing school with her at his home while I am at work. He remains with her until I end my shifts from work and when I end my shifts, I head straight to his house to pick her up and head on to my home . . . [in] Elizabeth This is a daily schedule. There has been a night or so out of the week where

she might sleepover his house because he is her father and also it's a little brake from our daily schedule, allowing them to sleep in a tad bit longer but she does not live with him. There also may have been a night where I may have spent the night as well but that's my personal life, I don't see why one or two nights may change my actual address or why my night out may affect my daughter's school. I usually take my daughter while she's asleep since its in the early hours of the morning, with that being said I leave her school lab-top at [J.S.'s] house since her homework and school work is completed by the time I pick her up. I don't find it necessary to have the lab top back and forth. All that's occurring is due to how school is being handled, the school being virtual baby sitters are charging double from the usual, my grandmother cannot understand or even handle doing the virtual learning with [A.S.] and her father playing his father, babysitter & tutor role is what is working for us. I would have no benefit at all in lying about where I reside, I have been in this location for 12 years. If [A.S.] gets put out of this school, where can I possibly place her if my address and all proofs remains the same which is [the Elizabeth address]. I had also requested to have an investigator come to our actual home to clarify any confusion but again have been unsuccessful.

In conclusion, I just needed to clarify on my behalf since I haven't been able to. I have attached the *appeal form* requested from me if I disagreed and also for your records I have attached *copies of my proof of address* along with *my license* and anything else that may be useful to this situation. Thank you in advance for the opportunity of explaining our situation and hope we can reach a resolution sooner rather than later.

[(P-1) (emphasis in original) (sic passim).]

In her Pro Se Residency Appeal form, A.M. added, "[A.S.] goes to [J.S.'s] house daily due to me working fulltime. He does virtual learning with her along with homework and watches her while I work. Once I'm done with my work I head to his house to pick her up & we repeat the same routine everyday!" (P-2) (emphasis in original).

In addition to those documents, A.M. submitted as proof of her Elizabeth residency copies of the following:

A.M.'s sister A.A.'s Month-to-Month Elizabeth lease dated August 1, 2020, naming the relatives of A.A. authorized to occupy the premises, including A.M., her children A.S. and A.W., and A.M.'s grandmother, M.V., (P-3);

A.M.'s New Jersey Driver's License issued April 25, 2017, with an expiration date of April 30, 2021, depicting the Elizabeth address, (P-4);

A.M.'s Car Finance Loan billing statement dated November 5, 2020, addressed to the Elizabeth address, (P-5);

A.M.'s New Jersey Auto Insurance Identification Card effective August 1, 2020, depicting the Elizabeth address, (P-6);

A.M.'s Mastercard credit card statement with a payment due date of October 24, 2020, addressed to the Elizabeth address, (P-7);

A.M.'s CreditOne credit card statement with a payment due date of November 17, 2020, addressed to the Elizabeth address, (P-8);

A.M.'s CapitalOne credit card statement with a payment due date of November 24, 2020, addressed to the Elizabeth address, (P-9);

A.M.'s Chase checking account statement for period of October 6, 2020 through November 4, 2020, addressed to the Elizabeth address, (P-10);

A.M.'s T-Mobile cell phone bill with a payment due date of November 6, 2020, addressed to the Elizabeth address, (P-11);

a notarized affidavit by A.M.'s sister, A.A., attesting to A.M.'s and A.S.'s Elizabeth residency, (P-13);

a notarized affidavit by A.M.'s grandmother, M.V., attesting to A.M.'s and A.S.'s Elizabeth residency, (P-14); and

an email from A.M. with an attached Time Frame of relevant events, (P-15).

In her testimony, A.M. stated that when they tested positive for COVID-19, she reported it to the school. She did not realize that she had to report where she was staying during quarantine. A.M. and her sister, A.A., decided it would be more convenient for A.M. to quarantine away from the Elizabeth address and stay with J.S. in Hillside, because he was COVID positive as well. A.M. stated that she and A.S. live with her grandmother, her sister, and her brother, who had returned home from college.

During their quarantine in Hillside, Calixto called A.M. and asked A.M. if she was home, A.M. said "yes," not realizing that Calixto was outside the Elizabeth residence. Calixto said that she had something to drop off for A.S., and A.M. was surprised and confused because she'd never had a teacher "pop up" at her house before. Calixto had previously told A.M. that her family would have to pick up materials for A.S. at the school, which they did. The Elizabeth residence is two blocks away from A.S.'s school.

A.M. then told Calixto that she was not at home, she was at [A.S.'s] dad's house, and she did not know that she had to report that. Calixto replied that that was "okay," and that she was just there to drop off something, so A.M. asked Calixto to leave it with A.M.'s grandmother. Calixto asked for the address where A.M. was at the time, and A.M. gave her J.S.'s address, which was also listed in the school address system as A.S.'s father's address in Hillside. A.M. thought that Calixto would then go to the Hillside address because A.M. assumed that Calixto wanted to see A.S. in person, which A.M. found to be "odd," because A.M., A.S. and J.S. were all still positive for COVID-19. A.M. had called and face-timed with Calixto "first thing" on the morning of Monday October 19, 2020, and advised her that she, J.S., and A.S. had all tested positive for COVID-19 on Friday October 16, 2020, so A.S. would not be attending school that week. I note that A.M. was

uncertain of some exact dates and bemoaned that she did not have a calendar in front of her during her testimony.

Calixto “popped up” at the Elizabeth address the following day, Tuesday, October 20, 2020, with the above-described supplies. On Thursday, October 22, 2020, Calixto “followed up,” by calling A.M. and asking “how everything was going.” On October 26, 2020, J.S. told A.M. that someone “popped up” at his house in Hillside at 11:00 a.m., while A.S. was “in school,” and asked if A.S. was there. A.M. reached out to the legal department to ask about the reason for their request for residency paperwork, but she assumed that it was merely a routine practice because it was [A.S.’s] first year in that school, and A.S.’s brother, A.W. had been in that school since he started school nine years ago. The school had previously asked for similar paperwork regarding A.W. on two occasions, and there were no problems. A.M. timely complied with the Board’s request for paperwork related to A.S.’s residency.

As stated in her written submission, (P-1), A.M. never denied spending some nights at J.S.’s house. A.M. testified that she would spend two or three nights per week at J.S.’s house, and that is how she and J.S. “managed [their] relationship, because it worked out better than living together,” which they previously did in Elizabeth. A.S. was doing remote learning with J.S. because A.M. was working at the time. On March 15, 2021, A.S. became very ill with MIS-C,² and was hospitalized in an Intensive Care Unit (ICU) for five days. A.M. had lost her job “right before” that.

A.S. was discharged from the hospital on March 19, 2021, and again quarantined for two weeks at J.S.’s residence. During that time, A.M. did not move her car from J.S.’s residence. As a result of A.S.’s illness and complications, she has seen numerous medical specialists since her MIS-C quarantine ended, and she was unable to attend in-person kindergarten instruction which commenced on April 22, 2021, due to her still-delicate health. At the time of the hearing, A.S. was still doing remote learning and undergoing further medical treatment until her doctors give her clearance to return to the

² Multisystem Inflammatory Syndrome in Children, a COVID-19 sequelae.

physical classroom. A.M. posited that if the pandemic had not occurred, “we wouldn’t be in this predicament right now.” A.M. noted that A.S. attended two years of public preschool in Elizabeth prior to the pandemic.

As to Buteau’s surmising that A.M. signed for the Initial Determination letter at J.S.’s home, A.M. insisted that she never signed for anything, and that she was not at J.S.’s home for that delivery or for the delivery of the Final Determination letter. A.M. explained that J.S. had advised her that when he went to his front door, he saw the UPS envelope with the Initial Determination from the Board had been slipped under the door. He picked up the envelope and sent A.M. a picture of it, and A.M. gave him permission to open it. J.S. told A.M. that he had not signed for the letter.

A.M. emphasized that her grandmother could not assist A.S. with remote learning because she does not speak English, does not understand computers, and requires the assistance of an aide who watches over her when A.M. and A.A. are not at home. A.A. is too busy to watch her grandmother because she is running a business. The only person available to help A.M. with A.S. is J.S.

On cross-examination, A.M. disputed Calixto’s testimony that A.M. stated that she had moved to Hillside and had not had time to update her driver’s license. A.M. stated that she had not mentioned moving or her driver’s license — at all. She conceded that she and J.S. had recently become closer and resumed a romantic relationship during the pandemic. She stated that J.S. has lived at the Hillside address for approximately three years.

A.M. stated that she has never resided at the Hillside address. She agreed that her name is on the Hillside address mailbox, along with J.S.’s name, and explained that she has all of her packages delivered to Hillside because her grandmother has trouble with her knees and “cannot walk all the way outside, and if it’s something heavy . . . and J.S. is always home.” She stated that when she picks up her children or goes to visit J.S., she picks up her packages at his home. She also noted that packages have disappeared

from the Elizabeth address, which I note is part of a duplex home, (R-2 dated 1/12/21). J.S. had given A.M. permission to ship her packages to his address, and J.S. added her name to his mailbox. A.M. stated that none of her mail goes to J.S.'s address, and that she has never used that address for anything but package deliveries.

A.M. admitted that she and her children spend "a few nights a week" with J.S. at the Hillside address, meaning two to three nights per week, but that there is no set schedule. They stay a combination of school nights and weekends, but "mostly weekends," to coincide with A.M.'s days off from work. On school days, A.M. would drop her children off in Hillside very early in the morning, or J.S. would pick them up, so that A.M. could drive straight to work. A.M. stated that from April 5, 2021 to April 14, 2021, she and J.S. and the children went on a vacation and she left her car parked at J.S.'s address the entire time.

On the first hearing date, A.M. was at the Elizabeth address with her sister, A.A., and her grandmother, M.V. When asked by the Board why A.M. had not called J.S. as a witness, A.M. stated that J.S. was in Hillside with A.S. helping her with remote learning. A.M. conceded that J.S. could have testified remotely from his Hillside residence, but that had not occurred to her prior to the hearing. As two hearing dates were scheduled, I gave A.M. the opportunity to have J.S. testify on April 23, 2021, but that date was carried sua sponte to May 18, 2021, at which time A.M. informed us that J.S. was hospitalized at 2:00 a.m. that morning and was too ill to speak. I offered to carry the hearing until J.S. was well enough to testify, but A.M. declined, and indicated that she was overwhelmed by these proceedings³ and a lack of closure, by numerous ongoing family medical emergencies, and by the April 29, 2021 death of her father, and her subsequent ongoing efforts to maintain his business in New York. Contrary to the Board's urging, I therefore draw no negative inference from the absence of J.S.'s testimony, particularly in light of J.S.'s November 9, 2020 statements to Buteau, which were favorable to A.M., not to the Board.

³ A.M. also indicated that subsequent to the Board's Final Determination concerning A.S.'s residency, the Board initiated separate residency and tuition reimbursement proceedings against her for her son, A.W., which has caused her further distress. That appeal, if any, is not before me.

According to the timeline that A.M. submitted at my request at the conclusion of the first hearing date, (P-15), on October 16, 2020, A.M., A.S., and J.S. all tested positive for COVID-19. On March 15, 2021, A.S. was hospitalized and diagnosed with MIS-C. On March 19, 2021, A.S. was discharged from the hospital, and began another quarantine in Hillside. On March 23, 2021, J.S. went on a business trip. On April 3, 2021, A.S.'s quarantine ended and A.M. and A.S. returned to the Elizabeth address. On April 5, 2021, A.M., J.S., and the children went on a vacation, and returned on April 14, 2021.

A.A.

A.M.'s sister, A.A., completed and signed a notarized affidavit dated February 22, 2021, noting that she is a waitress/owner of a restaurant, and stating, in relevant part:

I, [A.A.], Swear or affirm:

1. I am [A.M.'s] sister. [A.S.] & [A.W.] Aunt.
2. That in January 2009 we moved into this residency located . . . [in] Elizabeth Previously resided at . . . [in] Elizabeth . . . for 2 years. We have been part of this district for well over a decade.
3. [A.M.], [A.S.] & [A.W.] has always and continues to live with our grandmother and myself at our current household.
4. There are a couple of nights out of the week where [A.M.] sleeps out of the house.
5. Her current child care/tutor is [A.S.'s] father [J.S.] due to me running a business and our grandmother [M.V.] not being able to manage or understand online schooling.

[(P-13) (sic passim).]

In keeping with her affidavit, A.A. testified as follows. She is a restaurant owner. She is A.M.'s sister and A.S.'s aunt. In January of 2009, A.A. moved to the Elizabeth address with her grandmother M.V., A.M., and A.W. I note that A.S., who is only five, obviously was born after they moved in. A.S. does her remote learning at J.S.'s residence

in Hillside because A.A. is very busy with her work and M.V. is elderly and does not understand English or how to use a remote-learning system.

In October 2020, A.M. and A.S. did not stay at the Elizabeth address after they tested positive for COVID-19, to protect M.V., who is in delicate health. A.M. and A.S. stayed with J.S. in Hillside to quarantine and convalesce. The only other time A.M. and A.S. also stayed with J.S. for an extended period was when A.S. was hospitalized and in the ICU, and after she was discharged, because A.S. was still in frail health and A.A. is “always in contact with customers,” which posed a risk to A.S. A.M. has never moved out of the Elizabeth address. A.M. and A.S. have never resided with J.S. in Hillside. A few nights a week, “like two or three,” A.M. and A.S. sleep at J.S.’s Hillside residence. There is no set schedule – “it’s random.” A.S. has her own bedroom in Elizabeth. A.A. had no knowledge as to whether A.S. had a bedroom in Hillside.

M.V.

A.M.’s grandmother, M.V., with the aid of a Spanish interpreter, completed and signed a notarized affidavit dated February 22, 2021, which states, in relevant part:

“I [M.V.], grandmother of [A.M.], great-grandmother to [A.S.] & [A.W.] would like to state that we all live in the same household and there has never been any change to that. [A.S.] does the school with her father at his house because I am not capable of keeping up with the classes or how to even manage a computer. I am also in and out of doctor’s appointments. To be clear, I even have an aid who watches over me and does mostly everything for me when my grand-daughter isn’t home. In October of 2020, [A.M.] tested positive for Covid-19 and as I heard her ([A.M.]) and my other grand-daughter ([A.A.]) talk they discussed it was best for her to stay at [A.S.’s] father house to avoid getting me sick. Finally, once [A.M.] and the kid’s tested negative again they came back home to our home which is . . . [in] Elizabeth, NJ.”

[(P-14) (quotation marks in original) (sic passim).]

With A.M.'s assistance as M.V.'s Spanish interpreter, M.V. testified as follows. She has been living at the Elizabeth address for "a lot of years." She was born in 1932. She believes that she is eight-nine years old. She reported that she does not have memory problems, and she knew that her birthday is April 30, "which is the end of this month." She was able to identify the current President of the United States as "Joe," but did not know his last name. She lives with A.M., A.S., A.W., and A.A. She remembered that A.M. was staying elsewhere when A.S. was in the hospital. She recalled that there were times when A.M. "stayed out" with A.S. because of school and because M.V. does not understand English and therefore cannot assist A.S. with schoolwork. She stated that there were other times when A.M. and A.S. "sleep out" of the house, "about two times."

She stated that A.S. does her remote learning with J.S. in Hillside, and that some days A.S. does not return to the Elizabeth address. She stated that A.S. sleeps at J.S.'s house two to three times per week. M.V. goes to bed between 9:00 p.m. and 10:00 p.m., and A.S. returns to Elizabeth before M.V. goes to bed "more or less." M.V. normally wakes up at 7:00 a.m., but sometimes she wakes up earlier and sees A.S. leave to go to J.S.'s residence. When asked directly if A.M. has always lived with her at the Elizabeth address, M.V. replied, "Of course. She lives here. This is where she lives, in this house." When asked if A.S. lives with her in Elizabeth, M.V. replied, "Of course. Both kids live here." She confirmed that both A.S. and A.W. were born and raised in Elizabeth and have lived there all their lives.

J.S.

Although J.S. was unavailable to testify on May 18, 2021, due to his hospitalization, I **FIND** that his hearsay statements recorded in Buteau's report are admissible under the residuum rule, as there is legally competent evidence to support findings of fact "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." N.J.A.C. 1:1-15.5(b). In this case, J.S.'s hearsay statements were recorded in Buteau's report, which was heavily relied upon by Buteau, and admitted into evidence in its entirety.

According to Buteau's report, on November 9, 2020, he went to J.S.'s residence and spoke with J.S. directly. (R-7 at 2). J.S. confirmed that A.S. was present, but further explained that he was watching A.S. while A.M. was at work. Ibid. J.S. stated that A.S. does not reside with him, and that she resides in Elizabeth with A.M. and A.M.'s grandmother. Ibid. When Buteau informed J.S. that A.M. had purportedly "said she lived in Hillside," J.S. explained that "there was a big misunderstanding," and that "three weeks ago [A.M., A.S., and J.S.] had COVID and didn't want to spread it to [A.M.'s] grandmother because she is 92 years old so [J.S.] let [A.M. and A.S.] stay with him during that time but they're back in Elizabeth." Ibid. J.S.'s hearsay statements are corroborated by other competent credible evidence of record, including the testimony of A.M., A.A., and M.V., and J.S.'s reported statements give added probative force to that testimony.

CREDIBILITY DETERMINATIONS AND FURTHER FINDINGS OF FACT

I.

I must weigh the credibility of the witnesses to determine the ultimate issues. Credibility is the value that a factfinder gives to a witness's testimony. An ALJ's findings of fact as to issues of credibility of lay witness testimony may not be rejected or modified unless the record demonstrates that the findings are arbitrary, capricious or unreasonable, or not supported by sufficient, competent, credible evidence in the record. N.J.S.A. 52:14B-10(c).

"Credibility involves more than demeanor. It [contemplates] the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)).

A fact finder is expected to base credibility decisions on their common sense and life experiences. State v. Daniels, 182 N.J. 80, 99 (2004). Credibility is not dependent on the number of witnesses who appeared, State v. Thompson, 59 N.J. 396, 411 (1971), and a fact finder “is not bound to believe the testimony of any witness, in whole or in part,” State v. Muhammad, 182 N.J. 551, 577 (2005) (internal quotation marks omitted). Rather, they “may reject what in their conscientious judgment ought to be rejected and accept that which they believe to be credible.” Ibid. “The interest, motive, bias, or prejudice of a witness may affect [their] credibility and justify the [trier of fact] . . . in disbelieving [their] testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952) (internal quotation marks omitted).

Having heard the witnesses’ testimony and observed their demeanors and spontaneity, or lack thereof, I **FIND** that Calixto’s testimony was illogical, incomplete, less than credible, and contradicted by a preponderance of more competent credible evidence, including A.M.’s testimony and documentary evidence. I **FIND** that Buteau’s testimony was selective and misleading, particularly with respect to truancy, A.M.’s signature, A.M.’s responses to the Initial and Final Determinations, and J.S.’s explanation as to why A.M. and A.S. had stayed with him in Hillside while they all had COVID-19.

I **FIND** that A.M.’s testimony was candid, spontaneous, and highly credible. It was replete with details to which she testified from memory. Although some of the dates in her testimony do not align with Buteau’s report, (R-7), she testified without the aid of a calendar, and understandably struggled to identify certain dates from memory. At my request, she later produced a timeline of events, (P-15), which I take to be more reliable, as it is supported by J.S.’s November 9, 2020 statement to Buteau that he, A.M. and A.S. had come down with COVID-19 “three weeks ago.” Similarly, I **FIND** that A.A.’s and M.V.’s testimony was candid, spontaneous, and highly credible. Their testimony “hung together” with A.M.’s testimony and J.S.’s recorded statements to Buteau.

II.

Based upon the foregoing credibility determinations and the competent, credible evidence of record, I further **FIND** the following **FACTS**:

A.M. and A.S. are domiciled in Elizabeth with A.A., M.V., and A.W. The family has resided at the Elizabeth address since January 2009. J.S. resides in Hillside. But for the COVID-19 pandemic and the remote learning necessitated by it, A.S. would have physically attended kindergarten in Elizabeth, at the school which is two blocks from her house. She attended public preschool in Elizabeth for two years prior to kindergarten. Due to remote learning, A.S.'s tender years, and her medical conditions, she required childcare and adult assistance with remote learning, and her father was the only adult available to assist her, because hiring a babysitter/tutor was not economically feasible, A.M. and A.A. both worked during the day, and M.V. was incapable of assisting A.S. due to M.V.'s advanced age and language and technology barriers.

A.M., A.S., and J.S. were all diagnosed with COVID-19 on October 16, 2020. They continuously quarantined together at J.S.'s home in Hillside for the requisite two weeks, to protect M.V. from the ravages of that deadly virus. A.M. and J.S. have a cooperative co-parenting relationship, and have resumed a romantic relationship, but choose to live in separate houses for the health of their relationship. Two to three random nights per week, A.M. and her children stay overnight with J.S. to further their relationships and for their convenience. There is no credible evidence that A.M., and thus A.S., have moved from Elizabeth to Hillside. Although J.S. placed A.M.'s name on his mailbox, that was solely for the purpose of receiving package deliveries, as all of A.M.'s documentary evidence demonstrates that her permanent address is in Elizabeth. (P-1 through P-14).

To cast Calixto's testimony in a most favorable light, she misunderstood and overreacted to: (1) A.M.'s surprise and confusion that she would "pop up" at A.M.'s Elizabeth residence knowing that the family was infected with COVID-19; and (2) A.M.'s statements about staying in Hillside during their quarantine. To cast Buteau's testimony

and report in a most favorable light, he stated that he conducted surveillance on eleven separate occasions: nine times at J.S.'s residence, and two times at A.M.'s Elizabeth address. He did not clarify whether he conducted surveillance on any other dates or on weekends.

On Friday October 30, 2020, at an unspecified time, Buteau visited J.S.'s residence, and only J.S.'s car was in the driveway. On Monday November 9, 2020, at 11:45 a.m., he observed both J.S.'s and A.M.'s cars in the Hillside driveway, and J.S. confirmed that A.S. was there doing remote learning, but that she resided with A.M. in Elizabeth. Buteau did not inquire about or establish A.M.'s whereabouts, and he had no knowledge of why A.M.'s car was parked in the driveway, or whether, when, or how she commuted to work. On Thursday November 19, 2020, at 6:15 a.m., Tuesday January 12, 2021, at 6:30 a.m., and Thursday January 14, 2021, at 7:00 a.m., he observed both J.S.'s and A.M.'s cars in the driveway. He did not contact either of them for any explanation.

On Thursday January 21, 2021, at an unspecified time, Buteau visited A.M.'s address in Elizabeth and spoke with A.M. by telephone. A.M. advised him that she was at work and that A.S. was at J.S.'s house because M.V. could not take care of A.S. On Tuesday February 16, 2021, at 7:00 a.m., A.M.'s car was not parked at her Elizabeth address. No evidence was adduced as to where A.M.'s car was.

On Monday March 22, 2021, at 7:00 a.m., Buteau returned to J.S.'s residence in Hillside and observed J.S.'s car in the driveway and A.M.'s car parked in the street. That was during the period of A.S.'s second quarantine at J.S.'s home while she was recovering from MIS-C, from March 19 to April 3, 2021. The same is true of Buteau's Monday March 29, 2021 7:05 a.m. observation of A.M.'s car at J.S.'s residence. On Tuesday April 6, 2021, at 11:22 a.m., and Wednesday April 7, 2021, at 6:15 a.m., Buteau observed both A.M.'s and J.S.'s cars in J.S.'s driveway, while they were away on vacation with the children from April 5 to April 14, 2021.

In sum, of the nine surveillance visits to J.S.'s residence that Buteau reported, A.M.'s car was absent from J.S.'s address on one occasion, present on four scattered occasions, from November 9, 2020 to January 14, 2021, present on two separate occasions while A.S. was quarantined and convalescing from MIS-C in March 2021, and present on two separate occasions while the family was away on vacation in April 2021. The first and last four observations are therefore not dispositive in any way as to A.M.'s domicile, particularly in light of the fact that Buteau made no effort to speak with A.M. on those dates.

Of the four scattered occasions from November 9, 2020 to January 14, 2021 when Buteau observed A.M.'s car at J.S.'s residence, only two of those observations were made during the same week, on January 12 and January 14, 2021, which supports A.M.'s, A.A.'s, and M.V.'s testimony that A.M. only stays at J.S.'s house two to three nights per week, at most, and that A.M. and A.S. reside in Elizabeth. While Buteau's observations and photographs of A.M.'s and J.S.'s cars were accurate, he drew the wrong ultimate conclusion by failing to speak with A.M. directly for an explanation. If he had, he would have learned that A.S. lives with A.M. in Elizabeth for the majority of the school year, as four to five nights per week in Elizabeth constitutes the majority of a seven-day calendar week.

Calixto's, Buteau's, and the Board's choice to turn a blind eye and deaf ear to A.M.'s reasonable explanations for A.S.'s presence in Hillside for childcare, remote learning, and quarantine purposes during the worst pandemic this world has seen in more than a century was callous, to put it mildly. We have all had to make unforeseen, creative adjustments during this pandemic, and A.M. deserves credit, not punishment, for finding coping mechanisms that work for her family.

LEGAL ANALYSIS AND CONCLUSIONS

A student is eligible to attend a public school free of charge if the student is domiciled within the school district. N.J.S.A. 18A:38-1a; N.J.A.C. 6A:22-3.1(a). "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 school district.” N.J.A.C. . 6A:22-3.1(a)1. “Domicile” has been defined as the place where a person has their true, fixed, permanent home, and to which, whenever they are absent, they have the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). A person may have multiple residences, but only one domicile. Id. at 251.

When a student's parents or guardians are domiciled within different school districts and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year. This subparagraph shall apply regardless of which parent has legal custody.

[N.J.A.C. 6A:22-3.1(a)1.i (emphasis added).]

N.J.A.C. 6A:22-3.4, provides, in relevant part, that as proof of a student’s eligibility for enrollment in a school district,

(a) A district board of education shall accept a combination of any of the following or similar forms of documentation from persons attempting to demonstrate a student's eligibility for enrollment in the school district:

1. Property tax bills; deeds; contracts of sale; leases; mortgages; signed letters from landlords; and other evidence of property ownership, tenancy, or residency;
2. Voter registrations; licenses; permits; financial account information; utility bills; delivery receipts; and other evidence of personal attachment to a particular location;
3. Court orders; State agency agreements; and other evidence of court or agency placements or directives;
4. Receipts; bills; cancelled checks; insurance claims or payments; and other evidence of expenditures demonstrating personal attachment to a particular location or to support the student;

5. Medical reports; counselor or social worker assessments; employment documents; unemployment claims; benefit statements; and other evidence of circumstances demonstrating family or economic hardship, or temporary residency;

6. Affidavits, certifications, and sworn attestations pertaining to statutory criteria for school attendance from the parent, guardian, person keeping an "affidavit student," adult student, person(s) with whom a family is living, or others, as appropriate;

7. Documents pertaining to military status and assignment; and

8. Any other business record or document issued by a governmental entity.

(b) A district board of education may accept forms of documentation not listed in (a) above, and shall not exclude from consideration any documentation or information presented by an applicant.

(c) A district board of education shall consider the totality of information and documentation offered by an applicant, and shall not deny enrollment based on failure to provide a particular form or subset of documents without regard to other evidence presented.

[N.J.A.C. 6A:22-3.4(a)-(c) (emphasis added).]

Based upon the law, the evidence of record, and my factual findings, I **CONCLUDE** that A.M. has met her burden to prove by a preponderance of the competent credible evidence that she and A.S. were domiciled in Elizabeth, and that A.S. was therefore entitled to a free public education within the Elizabeth school district. N.J.S.A. 18A:38-1a. I therefore further **CONCLUDE** that the Board is not entitled to any tuition reimbursement under N.J.S.A. 18A:38-1b(2).

ORDER

It is therefore **ORDERED** that the Board's determination that A.M. and A.S. were not domiciled in Elizabeth and that A.S. was not eligible for a free education in Elizabeth is hereby **REVERSED**; and it is further **ORDERED** that the Board is not entitled to any tuition reimbursement.

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.



June 16, 2021 _____

DATE

SARAH H. SURGENT, ALJ

Date Received at Agency:

June 16, 2021 (emailed) _____

Date Mailed to Parties:

SHS/mel

APPENDIX

Witnesses

For Petitioner:

A.M.

A.A.

M.V.

For Respondent:

Sharon Calixto

William Buteau

Exhibits

For Petitioner:

- P-1 A.M.'s notarized Letter Petition: Notice of Final Ineligibility, dated November 20, 2020
- P-2 A.M.'s pro se Residency Appeal, dated November 20, 2020
- P-3 A.M.'s sister A.A.'s Month-to-Month Elizabeth lease dated August 1, 2020, listing authorized relatives of A.A. to occupy the premises, including A.M., her children A.S. and A.W., and A.M.'s grandmother, M.V.
- P-4 Photocopy of A.M.'s New Jersey Driver's License issued April 25, 2017 with expiration date of April 30, 2021, depicting address in Elizabeth
- P-5 A.M.'s Car Finance Loan billing statement dated November 5, 2020, addressed to Elizabeth address
- P-6 A.M.'s New Jersey Auto Insurance Identification Card effective August 1, 2020 depicting Elizabeth address
- P-7 A.M.'s Mastercard credit card statement with payment due date of October 24, 2020, addressed to Elizabeth address

- P-8 A.M.'s CreditOne credit card statement with payment due date of November 17, 2020, addressed to Elizabeth address
- P-9 A.M.'s CapitalOne credit card statement with payment due date of November 24, 2020, addressed to Elizabeth address
- P-10 A.M.'s Chase checking account statement for period of October 6, 2020 through November 4, 2020, addressed to Elizabeth address
- P-11 A.M.'s T-Mobile cell phone bill with payment due date of November 6, 2020, addressed to Elizabeth address
- P-12 Not in evidence (non-existent; exhibit number used in error)
- P-13 Notarized affidavit by A.M.'s sister, A.A., dated February 22, 2021
- P-14 Notarized affidavit by A.M.'s grandmother, M.V., dated February 22, 2021
- P-15 Email from A.M. with attached Time Frame of events, dated April 23, 2021

For Respondent:

- R-1 Undated Residency Report from Buteau to Christina DiPalo, Esq., covering period from October 29, 2020 through February 16, 2021
- R-2 Color photographs taken by Buteau dated October 30, 2020, November 9, 2020, November 17, 2020, November 18, 2020, November 19, 2020, January 12, 2021, January 14, 2021, and January 21, 2021
- R-3 Notice of Initial Determination of Ineligibility, dated October 30, 2020
- R-4 Notice of Final Ineligibility, dated November 13, 2020
- R-5 2020-2021 Budget Worksheet, Tuition Rates for Out-of-District Students Attending Elizabeth Public Schools
- R-6 Elizabeth Public Schools 2020-2021 School Calendar
- R-7 Undated Amended Residency Report from Buteau to Christina DiPalo, Esq., covering period from October 29, 2020 through April 6, 2021, with attached photographs by Buteau dated March 22, 2021, March 29, 2021, April 6, 2021, April 7, 2021
- R-8 Number of days requested for tuition reimbursement pursuant to N.J.A.C. 6A:22-6.2(a)