

**New Jersey Commissioner of Education**

**Final Decision**

A.T., on behalf of minor children, K.T. and P.T.,

Petitioner,

v.

Board of Education of the Township of Sparta,  
Sussex County,

Respondent.

**Synopsis**

Petitioner appealed the determination of the respondent Board that her minor children were not entitled to a free public education in the Sparta School District (the District) and may not continue to attend its schools. In August 2018, petitioner had purchased a home in Sparta that needed significant renovation to make it habitable. In September 2019, petitioner was granted permission for her children to attend school in the District pursuant to a Board policy that allows non-residents who have entered into a contract to buy, build, or rent a home in Sparta to attend its schools for up to 120 days without payment of tuition. In November 2020, the Board conducted a residency investigation and determined that the family was not living at the Sparta home, leading to the within appeal. The Board filed a motion to dismiss the petition, and a counterclaim for tuition in the amount of \$35,363.44 for K.T. and P.T.'s period of ineligible attendance.

The ALJ found, *inter alia*, that: petitioner's testimony during the hearing in this matter was not credible; evidence presented failed to prove that petitioner and her family had actually lived in the Sparta home; petitioner failed to satisfy her burden of establishing that she was domiciled in Sparta; further, petitioner and her family were not homeless, as the three-year period of construction on the house in which they had never lived was not the type of emergency that is contemplated by the laws regarding homelessness. Accordingly, the ALJ dismissed the petition and granted the Board's request for tuition reimbursement in the amount of \$35,363.44.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. The petitioner was ordered to reimburse the Board for tuition in the amount of \$35,363.44 for K.T. and P.T.'s period of ineligible attendance. The petition 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.

276-21

OAL Dkt. No. EDU 00306-21

Agency Dkt. No. 2-1/21

## New Jersey Commissioner of Education

### Final Decision

A.T., on behalf of minor children,  
K.T. and P.T,

Petitioner,

v.

Board of Education of the Township of  
Sparta, Sussex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4, and the Board's reply thereto, have been reviewed and considered.<sup>1</sup>

Petitioner purchased a home in Sparta in August 2018. In September 2019, she was granted permission for her children to attend school in Sparta while renovations were being completed, provided that the family moved into the home by January 2020. In November 2020, the Board conducted a residency investigation and determined that the family was not living at the Sparta home. Petitioner filed a petition of appeal and application for emergent relief in January 2021, and the Commissioner affirmed the Administrative Law Judge's (ALJ) emergent order permitting the children to remain enrolled in the district, with tuition charges accruing during the pendency of the hearing on the merits. In March 2021, petitioner claimed that she and

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<sup>1</sup> Following the filing of the Board's reply, petitioner – on her own, not through her attorney – emailed information to the Commissioner. Petitioner's counsel also submitted a letter in furtherance of petitioner's exceptions, to which the Board objected. As *N.J.A.C.* 1:1-14.8 does not provide for sur-replies to exceptions, these submissions were not considered.

her children were homeless; the Board determined that they were not homeless. Following a hearing, the ALJ found that petitioner's testimony was not credible and that she and her family had never lived in the Sparta home. The ALJ concluded that petitioner had failed to satisfy her burden of establishing that she was domiciled in Sparta. The ALJ further concluded that petitioner was not homeless, as the three-year period of construction on a home in which she had never lived was not the type of emergency that is contemplated by the laws regarding homelessness. Accordingly, the ALJ dismissed the petition and granted the Board's request for tuition reimbursement in the amount of \$35,363.44.

In her exceptions, petitioner argues that her testimony was credible, the home was habitable, she and her family did live there, and they only left to accommodate the needs of their autistic child. According to the petitioner, the ALJ ignored the provisions of the McKinney-Vento Act that demonstrate that petitioner was homeless. Petitioner asks the Commissioner to remand the case to the OAL to consider evidence regarding temperatures throughout the state of New Jersey, the effectiveness of attic fans, a recognition that petitioner's September 2019 email to the Superintendent set forth the required elements for a determination of homelessness, and the importance of the fact that petitioner was hired by the Board for a position within walking distance of the Sparta home.

In reply, the Board argues that the ALJ properly held that the Sparta home was uninhabitable based on the evidence, including petitioner's own testimony about numerous material defects. The Board contends that the Commissioner is required to defer to the ALJ's findings of fact based on credibility determinations because they are supported by the record and are not arbitrary, capricious, or unreasonable. According to the Board, petitioner's reliance on an email that she wrote to the superintendent about living in the Sparta home is self-serving, does not negate the ALJ's credibility determinations, and is contradicted by other statements made by petitioner. The Board acknowledges that the ALJ did not specifically reference the McKinney-Vento Act, but argues that

the ALJ did address the issue in finding that the family is not homeless. Finally, the Board contends that petitioner's request for remand is inappropriate because all of the issues or arguments she seeks to raise were considered by the ALJ.

Upon review, the Commissioner concurs with the ALJ's conclusion that petitioner failed to sustain her burden of establishing that she was a domiciliary of Sparta from January 3, 2020 to the present, or that she and her family were homeless during that period. The Commissioner further concurs with the ALJ's conclusion that the minor children were, therefore, not entitled to a free public education in Sparta's schools during that time.

Regarding the brief period during the summer of 2019 in which petitioner claims to have lived in the Sparta home, the Commissioner concurs with the ALJ's finding that the evidence demonstrates only a short visit insufficient to establish domicile. The ALJ had the opportunity to assess the credibility of the witnesses who appeared before her and make findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.

[*N.J.S.A. 52:14B-10(c)*].

The Commissioner finds no basis in the record to disturb the ALJ's credibility assessments. While petitioner's exceptions focus on the ALJ's reliance on the lack of air conditioning in the home, the ALJ's conclusion that petitioner was not credible was based on multiple factors, including the lack of the usual documentary evidence demonstrating residence and occupancy. The record makes clear that the family's true, fixed, and permanent home – where they ate, slept, and returned each day after school and work – was, and still is, in Garfield.

In the absence of the family's actual residence in the Sparta home, the only remaining piece of evidence in support of petitioner's claim is her intention to move into the home once repairs and renovations were completed. However, the Commissioner has previously rejected such arguments, and does so again here. See *K.L. and K.L. o/b/o minor child M.L. v. Bd. of Educ. of the Borough of Kinnelon, Morris Cty.*, Commissioner Decision No. 315-08 (July 22, 2008), *aff'd*, *K.L. v. Bd. of Educ.*, 2010 N.J. Super. Unpub. LEXIS 11 (App. Div. 2010); *S.H. and C.H., o/b/o minor children, C.H., S.H., and S.H. v. Bd. of Educ. of the Twp. of Alloway, Salem Cty.*, Commissioner Decision No. 79-19 (March 26, 2019).

The Commissioner further concurs with the ALJ's conclusion that petitioner and her children were not homeless during the time period in question. 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).

The Commissioner has previously addressed the fact-specific nature of a homelessness inquiry. In *M. O'K. v. Bd. of Educ. of the Borough of Cresskill, et al*, Commissioner Decision No. 325-14 (August 12, 2014), *aff'd*, A-0828-14T4 (App. Div. Sept. 8, 2016), following the foreclosure of their home in Cresskill, the O'K family occupied the bottom floor of their relatives' house in Little Ferry, which consisted of one small bedroom and a

common area, without a bathroom or kitchen. The parents and two of the children shared the bedroom, while their third child slept in the common area. At the time of the litigation, neither parent was employed, and the family's sole income consisted of Social Security Disability benefits. During the pendency of the litigation, the O'K family represented that they were actively searching for a house in Cresskill. The Commissioner found, and the Appellate Division affirmed, that the O'K family became homeless due to the foreclosure of their home in Cresskill, and although they had been deemed domiciled in Little Ferry as a result of their residence in the district for over one year, they continued to remain homeless due to their shared living conditions and the parents' economic hardship.

In contrast, in *Bd. of Educ. of the Borough of Hawthorne, Passaic Cty. v. Bd. of Educ. of the Borough of Prospect Park, Passaic Cty., and N.J. Dep't of Educ.*, Commissioner Decision No. 196-14 (May 12, 2014), the Commissioner concluded that the petitioner's family was not homeless when they voluntarily abandoned their fixed, regular, and adequate residence to live with the petitioner's mother as part of fulfilling a plan to move out of state. The Commissioner found that in determining whether a child is residing with a family member "out of necessity," an "examination of the conditions that precipitated the family's relocation is critical." *Ibid.*

Homelessness is best viewed as a continuum, and petitioner's family more closely fits the facts of *Hawthorne* than those of *M.O'K*. Here, as the ALJ noted, there is no evidence that petitioner's family was a victim of an abrupt change of circumstances. During the relevant time period, petitioner lived primarily at her mother's home in Garfield.<sup>2</sup> While living with

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<sup>2</sup> From the fall of 2020 until April 2021, when petitioner's brother also lived in the Garfield home, the family relocated to the home of a friend in Oak Ridge. There is limited evidence in the record about the adequacy of the Garfield home while petitioner's brother resided there, other than that it was crowded, and there is no evidence in the record about the adequacy of the Oak Ridge home. Accordingly, the Commissioner is unable to make a

petitioner's mother, petitioner and her spouse chose to purchase a home in Sparta that required major repairs and renovations to make it habitable – so much so that, three years later, at the time of the hearing, the family still did not reside in the home. There is no evidence that the Garfield home was inadequate, and, in fact, the record demonstrates that it has a “mother-daughter” layout that includes a separate kitchen. The family has lived in the Garfield home since 2017, well before the purchase of the Sparta home in August 2018, and the children attended preschool there through June 2019. There is no evidence that the family moved into the Garfield home out of necessity. These circumstances are not the kind of emergency typically experienced by families who are found to be homeless. Petitioner may consider her current residence in Garfield temporary, and her intention may be to move to Sparta in the future. However, the totality of the facts and circumstances in this case, as thoroughly detailed in the Initial Decision, demonstrate that the family is not homeless.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor children were ineligible to attend school in the district. The record reflects that there were 113 school days during the period from January 3, 2020 through June 19, 2020, and the cost of tuition for each child during that period was \$94.29 per day, making the total tuition for that period \$21,309.54. Furthermore, the record reflects K.T. attended school for 74 days from September 8, 2020 through January 11, 2021, at a tuition rate of \$101.84 per day, for a total of \$7,536.16. P.T. attended school for 69 days from September 8, 2020 through January 4, 2021, at a tuition rate of \$94.46 per day, for a total of \$6,517.74.

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determination regarding whether the relocation from Garfield to Oak Ridge was done out of necessity and may have justified a finding of homelessness for that time period. However, even assuming *arguendo* that petitioner and her family were homeless during that period, it appears that their district of origin would have been Garfield, not Sparta, as the family resided in Garfield prior to relocating to Oak Ridge, and they had never established a domicile in Sparta.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the total amount of \$35,363.44 for tuition costs incurred during the time period in which K.T. and P.T. were ineligible to attend school in Sparta. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>3</sup>

  
ANGELINA ALLEN McMILLAN, J.D.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 28, 2021

Date of Mailing: October 28, 2021

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<sup>3</sup> 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 00306-21

AGENCY DKT. NO. 2-1/21

**A.T. ON BEHALF OF K.T. AND P.T.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE  
TOWNSHIP OF SPARTA, SUSSEX  
COUNTY,**

Respondent.

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**George T. Daggett**, Esq., for petitioner A.T. o/b/o K.T. and P.T. (Law Offices of George T. Daggett, attorneys)

**Marc H. Zitomer**, Esq., for respondent Board of Education of the Township of Sparta (Schenck, Price Smith & King, attorneys)

Record Closed: July 23, 2021

Decided: August 5, 2021

BEFORE **GAIL M. COOKSON**, ALJ:

**STATEMENT OF THE CASE**

Petitioner A.T. filed and perfected a Petition of Appeal with the Department of Education on or about January 6, 2021, from the determination of the Board of Education

(“District” or “Board”) of the Township of Sparta (“Sparta”) dated November 20, 2020, that she and her family are not domiciled in the Sparta and that her children cannot continue to attend its schools. The Board answered the petition and filed a counterclaim demanding tuition repayment for the period since January 3, 2020. On or about January 11, 2021, petitioner filed a Request for Emergent Relief.

### **PROCEDURAL HISTORY**

The Department of Education Office of Controversies and Disputes transmitted the Petition and a Request for Emergent Relief to the Office of Administrative Law (OAL) on or about January 12, 2021. The matter was assigned to the undersigned for oral argument on the emergency request, which was held through Zoom technology, consistent with the OAL Covid-19 Emergency provisions, on January 15, 2021. A determination on the emergent application was filed on January 19, 2021, wherein I concluded that the emergent relief must be granted but subject to the potential continued accrual of tuition reimbursement.

The plenary hearing was held through Zoom technology, consistent with the OAL Covid-19 Emergency provisions, on June 25, 2021. Post-hearing submissions were permitted and the record closed on July 23, 2021, with their receipt.

### **JOINT STIPULATION OF FACTS**

The parties submitted a Joint Stipulation of Facts setting forth:

1. The Sparta Township Board of Education (“Board” or “District”) is a pre-K to 12 school district located in Sussex County, New Jersey.
2. A.T. (“petitioner”) is the parent of two children who are pertinent to this matter, K.T. and P.T. (collectively, “children”).
3. K.T. is in the first grade and is a child entitled to special education as diagnosed on the autism spectrum.

4. P.T. is in preschool. He has a heart condition, but he has not been designated as a child in need of special education.<sup>1</sup>

5. From 2017 until June of 2019, petitioner, her spouse, and her children lived at [xx] Main Street in Garfield, New Jersey. E.K. is the owner of the home and is petitioner's mother.

6. On or about June 28, 2018, Paul Lanaris of N.J. Best HOME INSPECTIONS conducted an inspection of the residence at [xxx] West Mountain Road in Sparta Township, New Jersey ("Sparta Home") for petitioner's spouse, K.T. ("spouse"). Inspector Lanaris noted material defects in the home. See Exhibit A for a copy of the inspection report.

7. On or about August 27, 2018, petitioner's spouse purchased the Sparta Home. See Exhibit B, August 27, 2018 Deed of Sale.

8. On September 18, 2019, petitioner e-mailed the District's Superintendent of Schools at the time, Dr. Michael Rossi, to inquire as to whether her children could attend the District's schools free of charge until construction was completed at the Sparta Home. Petitioner stated that, "construction [would] be done by January and [petitioner's family would] no longer be staying [with their] family but in [their] home by then." See Exhibit C, September 18, 2019 e-mail.

9. On September 19, 2019, Dr. Rossi transmitted two nearly identical letters to petitioner in response to her correspondence, wherein he notified her that the children were granted permission to attend the District's schools free of charge, but that if the family did not move into Sparta Township by January 3, 2020, tuition would be charged, per Board policy. Dr. Rossi's letters stated the following, in pertinent parts:

I am pleased to inform you that permission is granted with the understanding that you will provide transportation until you actually move into Sparta. [...]

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<sup>1</sup> This stipulation is herein revised to correct the identification of the proper student, as addressed at the hearing.

In the event you are not able to move by January 3, 2020, tuition will be charged. According to our current Board Policy, children are eligible to attend Sparta Schools if there is a signed contract to buy, build, or rent a residence within our district for a period not to exceed 120 days previous to the anticipated date of residency without tuition charges. If the Sparta residence is not established by the end of the period of free attendance, tuition shall be required for the remainder of the time until residency is established. Since your son will start school while not residing in Sparta on September 3, 2019, tuition would commence on January 3, 2020 and continue until the time you move.

[See Exhibit D, September 19, 2019 letters.]

10. The Board Policy that Dr. Rossi referred to was Policy 5111, “Eligibility of Resident/Nonresident Students (M)”, which states, in pertinent part:

A nonresident student otherwise eligible for attendance whose parent or guardian anticipates school district residency and has entered a contract to buy, build, or rent a residence in this school district may be enrolled 120 days without payment of tuition for a period of time not greater than 120 days prior to the anticipated date of residency. If any such student does not become a resident of the school district within 120 days after admission to school, tuition will be charged for attendance commencing the beginning of the 121<sup>st</sup> day and until such time as the student becomes a resident or withdraws from school.

[See Exhibit E, Board Policy 5111.]

11. From July of 2019 to October of 2020, petitioner, her spouse, and her children lived at [xx] Main Street in Garfield, New Jersey.

12. On November 3, 2020, the District Acting Superintendent of Schools at the time, Patrick McQueeney, wrote to petitioner and her spouse to inquire as to where they were domiciled at that time. He stated as follows:

As you know, Superintendent Rossi granted your children permission to continue attending school in the Sparta School District on a tuition-free basis until January 3, 2020 conditioned on you moving into the home at [xxx] West Mountain Road, Sparta, New Jersey. It has come to my attention that you are still not domiciled at that address. Upon

receipt of this letter, please provide proof of your family's current domicile status. I await your timely response.

[See Exhibit F, November 3, 2020 letter.]

13. Petitioner did not respond to Mr. McQueeney's November 3, 2020 letter.

14. The District's Director of District Operations, Michael Gregory, conducted a residency investigation to investigate whether the family was living at the Sparta Home. Mr. Gregory determined that no one was living at the Sparta Home. He concluded as follows in his November 13, 2020 investigation report, which included various photographs of the home:

I went to the residence on Friday, November 13, 2020 and found no one at the residence. The front door was boarded up, the in-ground pool appeared to not have been utilized this past season, and construction materials limiting access to the back porch. Photos of this visit are attached.

[See Exhibit G, November 13, 2020 Investigation Report with attached photographs.]

15. On or about November 13, 2020, Board Counsel transmitted a letter to petitioner and her spouse to notify them that the Board would be holding a residency hearing to determine her children's enrollment status on November 19, 2020, and that she was permitted to present a statement or other evidence. See Exhibit H, November 13, 2020 letter.

16. Petitioner elected not to attend, but rather, chose to submit a position statement through her Counsel on or about November 16, 2020. See Exhibit I, Position Statement.

17. At the November 19, 2020 Board residency hearing, the Board found that the children were not domiciled within the District during the 2019-2020 and 2020-2021 school years and assessed them tuition for the period of January 3, 2020 to the present. Board Counsel transmitted a letter to petitioner and her spouse the following day, November 20, 2020, to inform them of the Board's decision. See Exhibit J, November 20, 2020 correspondence with tuition spreadsheet and Resolution for the residence

hearing.

18. On January 3, 2021, petitioner e-mailed District Attendance Secretary Jennifer Sullivan to withdraw P.T. from the District for the remainder of the school year. Petitioner stated that P.T. would be receiving home instruction, and she attached an executed student withdrawal form to her e-mail. See Exhibit K, January 3, 2021 e-mail and attached student withdrawal form.

19. Petitioner filed a Petition of Appeal with the Office of Controversies and Disputes on January 6, 2021, and perfected same on January 8, 2021, appealing the Board's decision.

20. Petitioner filed an Application for Emergent Relief on January 11, 2021.

21. On January 19, 2021, the Honorable Gail M. Cookson, ALJ, granted petitioner's request for emergent relief, but with conditions. Judge Cookson concluded the Emergent Relief Order by stating "that petitioner's application for emergent relief must be granted, but conditioned upon the continued accrual of non-residential per diem charges pending the hearing on the merits." See Exhibit L, January 19, 2021 Emergent Relief Order.

22. In or around March of 2021, petitioner claimed, for the first time, that she and her children were homeless.

23. On or about March 22, 2021, the District's Homeless Liaison, Laura Trent, met with petitioner to discuss petitioner's homelessness claim.

24. On or about March 23, 2021, Ms. Trent made her determination that petitioner and her children were not homeless. She advised petitioner that she was permitted to enroll her children in the District, but per Judge Cookson's Emergent Relief Order, petitioner would be responsible for back-tuition should the Court find that she was not domiciled in Sparta Township. In a letter to petitioner, Ms. Trent stated as follows, in pertinent part:

It is our position that you are not homeless in Sparta, N.J. As you stated, you have chosen to live with friends and family in

Oak Ridge while the renovations are being completed on your Sparta home. This does not render you homeless. Importantly, the Administrative Law Judge concluded in your application for emergent relief application that you are not currently domiciled in Sparta and, by the admission of your attorney during oral argument, you have never occupied the Sparta home. Notwithstanding, you may enroll them in the Sparta School District, per the Judge's Order, but you will be responsible for back-tuition should the Judge conclude that you are not domiciled in Sparta.

[See Exhibit M, Laura Trent's March 23, 2021 letter.]

25. Upon learning of petitioner's disagreement with her determination, Ms. Trent wrote to the Sussex County Executive County Superintendent of Schools, Gayle Carrick, Ed.D., on or about April 1, 2021, to notify Dr. Carrick of the issue. Counsel for both the Board and for petitioner sent follow-up letters to Dr. Carrick regarding same on or about April 5, 2021. See Exhibit N, Ms. Trent's April 1, 2021 letter (without attached exhibits).

26. On or about April 20, 2021, Dr. Carrick acknowledged receipt of the issue and directed the parties to Judge Cookson's Emergent Relief Order, via a letter that she transmitted to Board Counsel with a copy to petitioner's Counsel:

I am acknowledging receipt of your correspondence dated April 5, 2021 regarding the T[.]/Sparta dispute and a determination of homeless. I direct you to the Order of Emergent Relief issued by ALJ Gail M. Cookson in this matter. Have a good day.

[See Exhibit O, April 20, 2021 letter.]

27. From April of 2021 until present, petitioner, her spouse, and her children have been living at [xx] Main Street in Garfield, New Jersey.

28. The children are not currently enrolled in the District.

It is also undisputed that prior to their residency application in Sparta but during the period both before and after purchase of the house in Sparta, the children attended

preschool in Garfield, with the older son attending there during both the 2017-2018 and 2018-2019 school years. [Exhibit R-1, ¶¶ 118-119.]

### **FACTUAL DISCUSSION**

Based upon the testimony of the witnesses and the documentary evidence presented, and with the opportunity to assess the credibility of the witnesses, I **FIND** the following:

A.T. testified that she and her family lived with her parents in Garfield prior to the purchase of the Sparta home. Her parents had a single-family house but it had a mother-daughter layout such that there was a separate kitchen etc. Petitioner stated that they moved into the Sparta home from June 22, 2019, through July 13, 2019, and intended to stay thereafter. She notified the Superintendent that she wanted to register the children in the Sparta schools. The office of the Superintendent forwarded the District's residency policy and explained that the family would be allowed to obtain a free public education in Sparta for the children for 120 days as the maximum allowed for a period of renovation. Petitioner questioned why the family was not entitled to regular residency attendance if they were living with family during just kitchen renovations. [P-1.] Her spouse was going to do the repairs himself for which they had obtained a permit. At that time, petitioner found the municipal offices to be very friendly and was actually able to procure a part-time job for herself in the building department.

Petitioner described the setting inside the house and the utilities they relied upon, such as hot spots rather than internet service. They all stayed in one bedroom to be able to comfort and supervise over the young children. P.T., who is autistic, has trouble sleeping and wanders, as well as places objects in his mouth. Petitioner became concerned with the potential hazards to him in the kitchen. In addition, it was determined that there was a rat infestation in the insulation, with other renovation issues much worse than they anticipated. As a result of these factors, they felt they had to leave the house while more extensive work was undertaken.



The family returned to petitioner's parents' home in Garfield but by then, her brother, who paid the real estate taxes for their parents, had moved into the self-contained apartment. Petitioner explained at the hearing that that meant that she, her spouse and the children shared just a regular bedroom. Because the house was crowded and her parents were getting too old to handle all of them living there, petitioner moved her family to a friend's home in Oak Ridge sometime in the fall of 2020 until April 2021, when they moved back to Garfield.

By January 2021, petitioner had dis-enrolled the children from Sparta because of the potential tuition claim. It appears that P.T. was in a private home-based ABA program for children on the autism spectrum. It was then that she was advised to consult the homeless liaison for Sparta.

Petitioner was questioned on cross-examination as to the discrepancy in the dates of their occupancy of the Sparta home in various documents. [R-4.] She also described more fully the furniture they moved in to include a bed, couches, boxes placed in the basement. They did not move in a dining room table but used a table left by the sellers. The District queried her extensively on the Inspection Report they procured prior to the closing (R-2), with emphasis on the numerous safety concerns that seemed to have been highlighted therein. Petitioner said her husband, who is an electrician for a public utility company, made some changes and also considered the panel old but functional.

Petitioner admitted that there was no functioning air conditioning when they were there for those weeks in late June and early July. Notwithstanding that her younger son has a congenital heart condition, she insisted that this was not a problem because they spent time outside and in the pool. She did confirm that there were roof and gutter leaks and no railings on the stairs, although the walls provided support. Petitioner asserted that they anticipate being able to move back into the home this summer, with an architect meeting with them the week following this hearing. On these stipulated facts and the petitioner's own testimony, following the purchase of the house, it was not made habitable, and I so **FIND**.

Patrick McQueeney testified for the Board. He is the Assistant Superintendent and explained briefly how the tuition calculations were made. [R-5.]

With the exception of the controverted three weeks in July 2019, it has been stipulated that petitioner's family lived in Garfield from 2017 through October 2020, and from April 2021 to the present. There is no dispute that they were living in neither Sparta nor Garfield between October 2020 and April 2021. Accordingly, the only possible period of physical occupation in the Sparta home is the summer of 2019. It is also not disputed that petitioner's family did not seek to enroll their young children into Sparta schools until a year after the purchase of the house, which interval was simply because of their ages. Further, during the period both before and after purchase of the house in Sparta, the children attended preschool in Garfield, with the older son attending there during both the 2017-2018 and 2018-2019 school years. [Exhibit R-1, ¶¶ 118-119.]

With respect to the three weeks referenced herein,<sup>2</sup> I must make credibility determinations with regard to these potentially material facts. A credibility determination requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Daiichi Pharm. Co. v. Apotex, Inc., 441 F. Supp. 2d 672 (D.N.J. 2006). After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I am convinced that petitioner's testimony was not credible.

Petitioner's testimony did not hang together or make sense in light of many factors, not the least of which were her son's heart condition, the lack of any air conditioning, the minimal amount of the utility bills during and after the alleged period of occupation, and the absence of supporting testimony from other members of her family. To the extent that there are undated photos of the family purportedly at the house only demonstrates some short visit, and I so **FIND**. In addition, I noted on the emergent application that the pleadings did not assert that petitioner had ever lived in her Sparta house and counsel conceded as

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<sup>2</sup> These three weeks were alternately referred to as simply "July" or more specifically as between June 22 and July 13, 2019. I do not find that distinction to be material to the issues herein.

much during that oral argument. To the extent that the family slept in the house for some unknown but likely only a few nights, I **FIND** that it was a contrived and manipulated setting in an attempt to buttress the residency application they were then engaged in making to the District.

As set forth above, there was testimony that the family lived in Garfield with petitioner's parents from 2017 through at least June 2019 in the lower-level apartment. That is to say, they lived there both before and after purchasing the Sparta house in August 2018, and the children attended preschool in that district. There was no testimony that they moved there out of necessity, nor is there any evidence in the record as to where they lived prior thereto. Based upon all these facts, I further **FIND** that the Sparta house cannot be a factual predicate for having to live with petitioner's parents.

These findings are further supported by the lack of the usual documentary indicia of residence and occupancy, such as utility bills, pay stubs, insurance, construction invoices. I concur with the District that the lack of production of this common evidence by the petitioner generates, at the very least, a rebuttable presumption that their production would not have helped her case.<sup>3</sup> Petitioner carries the burden of proving her domicile in Sparta for eligibility for free public education there and her lack of documentary or buttressing testimonial proof weighs against her case. See State by Comm'r of Transp. v. Council in Div. of Res. Dev., etc., 60 N.J. 199, 202 (1972)(litigant's failure to produce may be inferred to have been prompted by a conscious appreciation that the evidence would or might be hurtful to his position), citing Interchemical Corp. v. Uncas Printing & Fishing Co., 39 N.J. Super. 318, 328 (App. Div. 1956).

### **LEGAL DISCUSSION AND CONCLUSIONS OF LAW**

The District claims that petitioner cannot establish domicile in Sparta because the family has never lived in the still-uninhabitable house, had not established it as their

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<sup>3</sup> Insofar as there has been no demonstration of bad faith or destruction, nor is this a jury trial, a formal sanction of an "adverse inference" is not appropriate, nor has it been sought. See, e.g., Bozic v. City of Wash., 912 F. Supp. 2d 257 (W.D. Pa. 2012).

residence or domicile prior to registration of her children, and certainly was not living there as of January 3, 2020, when the 120-day grace period expired. It further argues that granting petitioner residency on this record would turn residency regulations on their head, to the effect that such a ruling would mean that anyone could purchase an uninhabitable home in a school district and thereafter assert residency and/or homelessness without ever having truly living in the district. The District also contested any claim of homelessness herein.

Petitioner argues that she and the family established their domicile in Sparta prior to registering the children in the District and that they intend to return to the home once renovations are completed. As such, and because they had to move from that residence, petitioner argues that they are currently homeless and that Sparta is the district of origin that must provide a free public education to their children under the homelessness regulations.<sup>4</sup>

The right to a thorough and free education in the district of one's New Jersey domicile is well settled. A.M.S. ex rel. A.D.S. v. Bd. of Educ. of City of Margate, 409 N.J. Super. 149, 160-61 (App. Div. 2009). Therein, the court stated:

N.J.A.C. 6A:22-2.1(b) requires school districts to adopt written policies and procedures related to student residency and to incorporate Department of Education (DOE) regulations pertaining to student residency into each district's policies and procedures. Moreover, in doing so, "a district board of education shall construe the provisions" of DOE regulations governing student residency "liberally so as to effectuate the right of students to a free public education." Ibid.

The Legislature has provided that local boards of education are responsible for the education of school-age children who are domiciled within their respective district. N.J.S.A. 18A:38-1. Narrow exceptions to the domicile rule are also provided when, among other things, the parent or guardian is a temporary resident of a district, N.J.S.A.

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<sup>4</sup> Initially, petitioner was pro se when she appealed to the Department. After counsel entered his appearance and after the emergency hearing, he asserted the claim of homelessness; although petitioner also testified that she received that advice from a private party as well. In light of my determination herein, I need not reach the issue of whether this was timely asserted.

18A-38-1(d), or a parent moves between districts as a result of homelessness. N.J.S.A. 18A-38-1(f). In any event, a child's district of residence is generally determined based upon the district of residence of the child's parent or guardian. See, e.g., N.J.S.A. 18A:7B-12; N.J.S.A. 18A-38-1.

Generally, eligibility under the education laws and regulations is framed as, in relevant part:

A student is eligible to attend a school district if he or she is domiciled within the school district. . . A student is domiciled in the school district when his or her parent or guardian resides within the school district on an all-year-round basis for one year or more, notwithstanding the existence of a domicile elsewhere.

[N.J.A.C. 6A:22-3.1(a)(4) (as amended 2013)(emphasis added).]

It should be noted that the regulations had provided at the time of earlier decisions, e.g., K.L. v. Bd. of Educ., No. A-5671-07T1, 2010 N.J. Super. Unpub. LEXIS 11, at \*9 (Super. Ct. App. Div. Jan. 4, 2010):

A student is domiciled in the school district when he or she is living with a parent . . . whose permanent home is located within the school district. A home is permanent when 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).]

Petitioner has asserted that she and her family intend to return to this home and had no intent to move from it but did so out of necessity. Yet, as we see, this regulation as amended no longer encompasses the concept of "intent." 45 N.J.R. 1209(a) (May 20, 2013). Moreover, the concept of "returning" to a home one never truly lived in, as supported by the findings of fact above, I **CONCLUDE** negates petitioner's assertion of intent.

According to N.J.S.A. 18A:7B-12(c), “[t]he district of residence for children whose parent . . . temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent . . . last resided prior to becoming homeless.” The district of residence shall be responsible for the education of a homeless child for as long as the parent remains homeless. N.J.A.C. 6A:17-2.4(a) and (c). In addition, “[e]nrollment in the school district of [residence] . . . shall continue for the duration of homelessness, including . . . for the remainder of the academic year if the homeless child becomes permanently housed during the academic year.” N.J.A.C. 6A:17-2.6(h).

Before we can even reach the issue of whether Sparta is the district of domicile of the children, sometimes referred to as the “district of origin,”<sup>5</sup> we must examine whether the facts even support a finding of “homelessness.”

(a) A district board of education shall determine that a child is homeless for purposes of this subchapter when he or she resides in any of the following:

\* \* \*

3. The residence of relatives or friends with whom the homeless child is temporarily residing out of necessity because the family lacks a regular or permanent residence of its own; or

[N.J.A.C. 6A:17-2.3 (emphasis added).]

It is clear that the determination of “necessity” here is fact sensitive, on which issue petitioner has the burden of proof. Hawthorne BOE v. Prospect Park BOE and Dept. of Educ., OAL DKT. NO. EDU 16270-13, Final Agency Decision (May 12, 2014) <http://njlaw.rutgers.edu/collections/oal/>>. In Hawthorne, the Department held:

Upon full consideration, the Commissioner concurs with the ALJ’s determination that the A. family was not homeless within the meaning of N.J.S.A. 18A:7B-12c and N.J.A.C. 6A:17-2.3. The Commissioner explicitly rejects respondents’ assertion that the impetus for the A. family’s departure from the Hawthorne apartment is immaterial. To the contrary, the

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<sup>5</sup> “District of residence” is also referred to as “district of origin.” See N.J.A.C. 6A:17-2.2.

Commissioner finds that an inquiry into the circumstances surrounding the A. family's move is essential to the homelessness determination.

A "homeless child" is one who lacks a fixed, regular and adequate residence. N.J.A.C. 6A:17-2.2. Not every child residing temporarily with a relative is "homeless." Rather, pursuant to N.J.A.C. 6A:17-2.3(a)3, such a child is homeless when he or she resides in "[t]he residence of relatives or friends with whom the homeless child is temporarily residing out of necessity because the family lacks a regular or permanent residence of its own." An examination of the conditions that precipitated the family's relocation is critical to ascertaining whether the living arrangement arose "out of necessity," and whether the family is without access to a "regular or permanent residence of its own."

In the instant matter, the ALJ specifically found that the A. family was not forced out of their Hawthorne apartment, that N.A. was up to date on her rent, and that there was no evidence that she was unable to pay rent going forward. The ALJ further found that N.A. voluntarily abandoned her Hawthorne home and temporarily relocated the A. family to her parent's home in Prospect Park as part of fulfilling her plan to move to Florida.

As was true in Hawthorne, there is no evidence that petitioner's family was a victim of an abrupt change of circumstances. They chose to purchase a home in need of major repairs and renovations while they were already living in Garfield with her parents. Further, they did not move into the home after purchasing it. There was no crisis of immediacy. This situation is not that of a homeless family. See, e.g., J.G. and D.G. v. Bd. of Educ. of Point Pleasant, EDU 4688-10, Initial Decision (September 23, 2010), adopted, Comm'r (December 27, 2010), <http://njlaw.rutgers.edu/collections/oal/>>. The family's circumstances here are clearly distinguishable from cases where a family becomes transient due to an emergency. See, e.g., S.J. o/b/o V.J. v. Bd. of Educ. of S. Orange-Maplewood, EDU 5656-07, Initial Decision (January 22, 2008), adopted, Comm'r (March 3, 2008), <http://njlaw.rutgers.edu/collections/oal/>> (family evicted from apartment and then drifted around while living in a beauty salon, with a friend, and with child's grandmother in an attic); A.B. v. W. Orange Bd. of Educ., EDU13330-09, Initial Decision (January 25, 2010), adopted, Comm'r (April 13, 2010),

<http://njlaw.rutgers.edu/collections/oal/>> (single mother evicted after losing full-time job and thereafter alternated between apartments of several friends).

In combination with my factual findings on the uninhabitability of the Sparta house, I **CONCLUDE** that their purchase of said house during the period of domicile in Garfield cannot be used to bootstrap either a temporary relocation away from Sparta or homelessness. The home construction has apparently continued, on but mostly off, without completion, for the three years since it was purchased by petitioner and her husband. In fact, only after the hearing was petitioner meeting with an architect to draw up the needed structural renovations. This is not the case of temporary relocation away from one's abode due to fire, storms or other natural disasters; rather, petitioner and her spouse purchased an unsafe and largely uninhabitable house, as evidenced by the fact that they did not live in after the closing in August 2018 and until they were trying to register their children in school.

Except for some unknown and unverifiable number of days in the summer of 2019, and a few months with a friend in Oak Ridge, petitioner, spouse and children have clearly been domiciled in Garfield from 2017 to the present. On the basis of the above-referenced facts and legal authority, I **CONCLUDE** that petitioner has never been domiciled in Sparta and is not now homeless, from Sparta or, for that matter, anywhere else. When and if petitioner establishes that the family is genuinely living in the Sparta house, with a Certificate of Occupancy, they shall then and only then be entitled to register their children in the Sparta school district.

### **ORDER**

Accordingly, it is **ORDERED** that petitioner's appeal from the Sparta Township Board of Education residency determination is and the same is hereby **DENIED** and the determination of the Sparta Township Board of Education on residency and homelessness is **UPHELD**.



It is further **ORDERED** that the counterclaim of the Sparta Township Board of Education for tuition reimbursement in the amount of \$35,363.44 is **GRANTED** to the extent of only the days when the children attended its schools after January 3, 2020, or the period of ineligibility.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 5, 2021  
DATE



GAIL M. COOKSON, ALJ

Date Received at Agency

8/5/21

Date Mailed to Parties:

8/5/21

id

**APPENDIX**

**LIST OF WITNESSES**

For Petitioner:

A.T.

For Respondent:

Patrick McQueeney

**LIST OF EXHIBITS IN EVIDENCE**

Joint Exhibits

J-1 Joint Stipulation of Facts

Petitioner's Exhibits

P-1 E-Mail exchange between Petitioner and District, dated September 19, 2019

P-2 Photo of Inground Pool

P-3 Photo of Children Eating Pizza

P-4 Photo of Child Playing Pool

P-5 Photo of Inground Pool (2)

P-6 Photo of Laundry Room

P-7 Photo of Bathroom

P-8 Photo of Bedroom Shared By Entire Family

P-9 Photo of Kitchen Pre-Renovation

Respondent's Exhibits

R-1 Petitioner's Answers to Board's Interrogatories and Demand for Production of Documents

R-2 Petitioner's Documents Provided in Response to Board's Interrogatories and Demand for Production of Documents

- R-3 Petitioner's Supplemental Answers to Board's Interrogatories and Demand for  
Production of Documents, dated June 16, 2021
- R-4 Student Residency Form, dated March 21, 2021
- R-5 Tuition Cost Spreadsheet