

297-24

OAL Dkt. No. EDU 11042-23

Agency Dkt. No. 251-9/23

New Jersey Commissioner of Education

Final Decision

T.C.L., on behalf of minor children, C.C. and V.C.,

Petitioner,

v.

Board of Education of the Bordentown Regional
School District, Burlington County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that petitioner has demonstrated, by a preponderance of the credible evidence, that she, C.C., and V.C. are domiciled at an in-district address in Bordentown. Accordingly, the children are eligible to receive a free public education in the Bordentown Regional School District pursuant to *N.J.S.A. 18A:38-1(a)*, and respondent is not entitled to reimbursement for the cost of the children's tuition.

Accordingly, the Initial Decision is adopted, and the petition of appeal is hereby granted.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 6, 2024

Date of Mailing: August 7, 2024

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 11042-23

AGENCY DKT. NO. 251-9/23

T.C.L. ON BEHALF OF C.C. AND V.C.,

Petitioner,

v.

BOARD OF EDUCATION,

BORDENTOWN REGIONAL SCHOOL

DISTRICT, BURLINGTON COUNTY,

Respondent.

Samuel M. Watson, Esq, for petitioner (South Jersey Legal Services, Inc., attorneys)

Cameron R. Morgan, Esq., for respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC, attorneys)

Record Closed: May 20, 2024

Decided: July 5, 2024

BEFORE **MARY ANN BOGAN**, ALJ:

STATEMENT OF THE CASE

Petitioner T.C.L. on behalf of her minor children, C.C. and V.C., appeals the decision of respondent, Bordentown Regional School District, Board of Education

(Board), that C.C. and V.C. were not eligible to attend school within the Bordentown Regional School District (District), for the school year pursuant to N.J.S.A. 18A:38-1, and its accompanying regulations, N.J.A.C. 6A:1-1.1 et. seq., for the school year. The Board contends that C.C. and V.C. are not eligible to attend school in the District because they live in a home not domiciled in the Bordentown Regional School District. The District requests that tuition be assessed for each of the two children for the period of ineligible attendance at the approved per-pupil tuition rate.¹

PROCEDURAL HISTORY

The Board retained McNelis Investigative Services, Inc. to conduct a residency investigation. The Board introduced a Surveillance Report (report), prepared by Vanessa Bekarciak, who was not present to testify regarding the investigation. (R-1.) The report indicates that surveillance of petitioners took place on June 1, 2, and 7, 2023. Thereafter, the District issued a Final Notice of Ineligibility Due to Non-Residency in the District, dated August 29, 2023, to T.C.L., stating that C.C. and V.C. are not eligible to attend school in the District because:

The district was provided with information showing that you and your two sons, C.C. and V.C. are no longer residing at your former address within the District, located at Bradford. Surveillance was subsequently conducted resulting in an Investigation Report which documented through eyewitness accounts, as well as video and photographic evidence, your husband transporting V.C. and C.C. back and forth between your current home at Coachman, within the Florence Township School District, and their bus stop in proximity to your previous address in the District, at Bradford.

[P-5.]

On September 15, 2023, T.C.L. filed a pro se petition with the Office of Controversies and Disputes of the New Jersey Department of Education. The matter was transmitted on October 18, 2023, to the Office of Administrative Law (OAL) and filed as a

¹ After petitioner purchased the Coachman home with S.L., who was her fiancé at that time, the District challenged petitioner's residency in 2022. The Board voted to withdraw the notice of ineligibility, and C.C. and V.C. remained enrolled at the District. (P-1, P-3, and P-4.)

contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Prehearing conferences were held, and after the parties completed discovery and confirmed witnesses, the hearing took place on April 9, 2024. The record closed on May 20, 2024.

FACTUAL DISCUSSION AND FINDINGS

The issue in dispute is whether the petitioner and her two minor children reside in a three-bedroom apartment on Bradford Street located in the geographic area served by District during the school year or whether they live outside of the District geographic area and owe the amount of tuition to respondent for the school year.

The following is a summary of the testimonial and documentary evidence that I found relevant to the above issues.

Petitioner has leased a three-bedroom apartment on Bradford Street in Bordentown (Bradford) since January 1, 2010. Her adult daughter and two minor children are named on the lease as residents. Petitioner introduced a newly signed lease, dated January 1, 2024, to December 2024, and introduced portions of the prior year leases from January 1, 2010, including for the years 2022–2023. (P-20 and P-17.) Rental receipt payments for June 2023 through September 2023 were also provided. (P-8.)

Petitioner testified that in the spring of 2022, petitioner's then fiancé, S.L., decided to buy a home located on Coachman Drive in Bordentown (Coachman). Petitioner is a co-owner and signed the mortgage. Petitioner planned to move into the home with C.C. and V.C. full time and lived there during the summer of 2022. When petitioner began to update the family's transportation information with the District, she learned that the home is located in the Florence Township school district even though the home is located in Bordentown and has a Bordentown address and zip code. Petitioner decided that switching schools would negatively impact C.C.'s and V.C.'s education, so she decided that she would return full time to the Bradford apartment with the children, and S.L. would remain in the Coachman home. Petitioner submits that her living arrangement is consi-

stent with District policy, which states:

The requirements to attend schools in the Bordentown Regional School District require children to be domiciled in the school district with parents/guardians. This means they must live and sleep in a legal residence of the sending district for the majority of the week.

[P-18]

T.C.L. stated that the family spends an occasional weekday night with S.L. at Coachman, and many weekend nights. However, a majority of their belongings remain in Bradford, where they sleep the majority of time.

T.C.L. testified that the surveillance documented in the report introduced by the District, which was taken over a three-day period during two school weeks on June 1, 2, and 7, 2023, does not show that the children live at the Coachman home or leave for school from that home. Petitioner points out the first day of surveillance begins with V.C. at the Coachman address on a school morning. Then the video shows V.C. returning to Bradford, exiting the apartment with another child and walking to the bus stop. On the second day of surveillance, V.C. is observed leaving Coachman, returning to Bradford, and sitting in a stairwell at the residence with another child. V.C. then walked to the bus stop with two other children. On June 7, 2023, S.L. and V.C. are observed exiting the Coachman property, where they were followed, to Bradford, where V.C. was dropped off. V.C. was then observed walking to the bus stop with another child. Surveillance was resumed in the afternoon at Coachman, but no activity was observed for the remainder of that day. The investigative report, which describes V.C. being picked up from the bus by T.C.L. one afternoon and returning to Coachman, and C.C. being picked up from the bus two afternoons and brought back to the Coachman address, does not document the minor children sleeping at the Coachman home on those nights. T.C.L. noted that when C.C. was picked up from the bus on June 2, he would have stayed overnight because that was a Friday night.

Petitioner urges that the surveillance demonstrates that C.C. and petitioner slept at the Bradford apartment each night, and the report does not view T.C.L. at the

Coachman property at any time. Petitioner put forward that the part in the investigative report which shows a white car that the investigator concluded was associated with T.C.L. at the house on each of the three days does not indicate that she stayed at the Coachman home. Petitioner states that car is a family car registered in both her name and S.L.'s name for their two adult children, and on most workdays, she carpools to work. She introduced work emails from June 7, 2023, to demonstrate that on the same day the car was viewed at the Coachman home, she was at work. (P-19.)

Petitioner's New Jersey driver's license reflects the Bradford home.

S.L., petitioner's husband, testified it was likely he would be seen picking the children up from their bus stop after school to take the children to the Coachman property because he is responsible for after-school care. It is also not unusual for the children to stay with him for dinner and any sports activity because he participates with them in that activity and then transports them back to the Bradford home. S.L. acknowledged that V.C. stayed with him for a few nights in June 2022 to help him work through a difficult time he was having in school, but the children do not routinely sleep at the Coachman home during the school week.

J.J., a neighbor at the Bradford location, testified that she has been neighbors with petitioner, C.C., and V.C. at Bradford since her son started kindergarten, about eight years ago. J.J. recalled that petitioner told her that she and S.L. had bought a new home and planned to move. Sometime later, petitioner told her that she and the children would remain living in Bradford because she learned that the Coachman home was located outside of the District. J.J. continues to see the boys around the apartment complex as much as she did before petitioner bought the home, and her son and petitioner's children still play together for the same amount of time as they did before the other home was purchased. J.J. has recently been inside the petitioner's apartment, and it still looks the same as it did over the last years.

It is undisputed that petitioner signed a current lease for Bradford, and her children's names are on the lease as residents. Petitioner submitted a signed letter from the property manager stating that she, C.C., and V.C. live at Bradford; rent payments,

payroll statements, and W-2 statements from T.C.L.'s job that all reflect the Bradford address; and an AT&T bill and C.C. and V.C.'s "Virtual Wallet Student Spend Statement," which also reflect the Bradford address. (P-7, P-11, P-12, P-13, P-14, P-15, and P-16.)²

Respondent did not present witnesses to testify on its behalf, including the investigator who prepared the surveillance report. This report was introduced and contains observations recorded on June 1, 2, and 7, 2023. (R-1.)³

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. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses, I **FIND** them to be credible. Petitioner testified clearly and directly as to her unique circumstances, and her testimony is consistent with the surveillance. S.L.'s testimony was also clear and responsive to the observations in the surveillance showing him transporting the children, and his explanation that he is responsible for the children's after-school care is believable. Neighbor J.J. also testified in a believable manner about her observations of the children in and around the Bradford apartment complex and inside the apartment.

² Petitioner also introduced a notarized affidavit from a neighbor C.M.H. at Bradford, dated February 21, 2024. This document was not accepted into evidence, as it is outside the scope of this appeal.

³ Respondent also introduced an unsigned, undated letter that was incomplete and determined to be hearsay. This document was not accepted into evidence. Respondent also entered a one-page letter signed by Investigator William R. Moore, describing the content of surveillance taken mid-year of the year following the school year at issue. Mr. Moore was also present to testify. The testimony and introduction of after acquired evidence containing surveillance taken mid-year of the next school year is outside the scope of the due process petition period of ineligibility and was not accepted.

The fact that the surveillance report submitted in the form of written documents is hearsay provides no basis for its exclusion in this forum. Hearsay evidence is admissible, N.J.A.C. 1:1-15.5(a). Ultimately, if evidence or testimony is found to be hearsay, it will be accorded whatever weight the judge deems appropriate taking into account the nature, character, and scope of the evidence, and generally, its reliability. In the final analysis of the administrative case, the residuum rule must be satisfied. This rule states there must be some legally competent evidence to support each ultimate finding of fact relative to the issues before the court. N.J.A.C. 1:1-15.5; see also Weston v. State, 60 N.J. 36, 51 (1972). Here, the evidence was used reasonably to provide the respondent with an opportunity to cross-examine the petitioner. However, it is not disputed that the District's only proffered evidence is hearsay; its author did not appear to present testimony as to the investigation or the content of the report, thereby limiting its reliability.

LEGAL ANALYSIS AND CONCLUSION

The issue is whether petitioner and her minor children are domiciled in the District at the Bradford home for the school year for purposes of receiving a thorough and efficient public education free of charge pursuant to N.J.S.A. 18A:38-1. If not, whether the respondent's request for tuition reimbursement for the school year should be granted.

Public schools are free to persons over five and under twenty years of age who are domiciled within the school district. N.J.S.A. 18A:38-1(a), which sets forth the right of a student to a free public education, states in pertinent part:

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

- a. Any person who is domiciled within the school district[.]

Pursuant to N.J.A.C. 6A:22-3.1(a)(1), a student is eligible to attend a school within a school district if he or she is domiciled within the school district, and 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.

“Domicile” is defined as “the place where [a person] has his [or her] true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has an intention of returning.” T.B.W. ex rel. A.W. v. Bd. of Ed. of the Township of Belleville, Essex County, 1998 N.J. AGEN LEXIS 122, Agency Dkt. No. 159-5/96, 1998 WL 668678 (N.J. Adm. June 18, 1998). As the court noted in Collins v. Yancey, 55 N.J. Super. 514, 520–21, 151 A.2d 68 (Law Div. 1959), a person may have several residences or places of abode, but only one domicile at a time. Id.

[D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist., 366 N.J. Super. 269, 273–74 (App. Div. 2004).] [In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), aff'd, 311 N.J. Super. 589 (App. Div. 1998), cert. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051 (1999).]

A child’s domicile is normally that of his or her parents. Somerville Bd. v. Manville Bd., 332 N.J. Super. 6, 12 (App. Div. 2000), aff'd, 167 N.J. 55 (2001). The acts, statements, and conduct of the individual, as viewed in light of all circumstances, determine a person’s true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959). A choice of domicile by a person, irrespective of his motive, will be honored “provided there are sufficient objective indicia, by way of proofs, supporting the actual existence of that domicile.” In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991).

If a school district finds that the parent or guardian of a child who is attending school in the district is not domiciled in the district, the superintendent or administrative principal may apply to the board of education for the removal of the child. N.J.S.A. 18A:38-1(b)(2). The parent or guardian is entitled to a hearing before the board, and if, in the judgment of the board, the parent or guardian is not domiciled within the district, the board may order the transfer or removal of the child from school. Ibid. The parent or guardian may contest the board’s decision before the Commissioner within twenty-one days of the date of the decision and is entitled to a hearing. Ibid.

In challenging the findings of a board regarding a child’s eligibility to attend school in the district, parents have the burden of establishing that their domicile is in the school district by a preponderance of the evidence. Y.E. ex rel. E.E. v. State-Operated Sch. Dist. of the City of Newark, No. A-6009-06T3 (App. Div. 2008); N.J.S.A. 18A:38-1(b)(2). A

student is a resident of a school district when he or she is the child of a parent or guardian⁴ whose domicile is located within the school district. N.J.A.C. 6A:22-3.1(a)(1).

When a person arguably has more than one residence, there are factors to consider in determining his or her domicile: the physical characteristics of each place; the time spent and the things done in each place; the other persons found there; the person's mental attitude towards each place; and whether or not there was an intention, when absent, to return to that address. Mercadante v. City of Paterson, 111 N.J. Super. 35, 39–40 (Ch. Div. 1970), aff'd, 58 N.J. 112 (1971).

It is undisputed that petitioner has been renting an apartment located in the geographic area of the District for fourteen years. After she married, petitioner and her husband purchased a home in 2022 in the same town and then later learned that the home was not located in the geographic area of the District. It is also undisputed that the District's sole evidence was the surveillance that never viewed T.C.L. at the Coachman home. Instead, the surveillance that viewed T.C.L. was at the Bradford apartment with C.C. supports petitioner's testimony. In addition, petitioner presented documentary evidence that includes the usual documentary indicia of residence and occupancy, such as pay stubs, current and past leases, student accounts, credit card statements, phone bills, and petitioner's current driver's license, which create a nexus between the family's day-to-day living at the Bradford address.

Accordingly, the investigative report indicating that C.C. and V.C. were seen over the course of a few days at the Coachman home during the 180 required school days, is insufficient to determine that petitioner, and her children, C.C., and V.C. are domiciled outside of the geographic area of the District.

The District stated in their closing statements that the evidence demonstrates that the children being "shuffled" back and forth from the Coachman home to the Bradford home near the bus stop, and testimony on behalf of petitioner stating that the children return to Bradford after an evening of sports with their stepfather at Coachman strains

⁴ The record contains insufficient evidence to determine whether S.L. is considered a guardian to his stepchildren.

credibility. The information used for the basis of the District's disbelief is not sufficient to refute the witnesses' sworn testimony and evidence to remove the children from the District school. Moreover, this disbelief does not refute the plausible reasons that children would travel to the Coachman home for after-school care and, on occasion, stay with their stepfather on a school night.

Based on N.J.A.C. 6A:22-3.1(a)(1) and the analysis in In re Unanue, the Bradford address is where petitioner returned to on a daily basis, and where petitioner remained domicile with her C.C. and V.C. As unemancipated children, C.C. and V.C. are domiciled with their parent, T.C.L., the petitioner. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000).

Accordingly, I **CONCLUDE** that petitioner has demonstrated by a preponderance of the credible evidence that she and her children, C.C. and V.C., are domiciled at the Bradford home in Bordentown for the school year and are eligible to receive a free public school education in the Bordentown Regional School District, and respondent is not entitled to reimbursement for the cost of tuition.

ORDER

It is hereby **ORDERED** that respondent's determination that petitioner's children, C.C. and V.C., were ineligible for a free public education in the Bordentown Regional School District for the school year is hereby **REVERSED**.

Petitioner's appeal is **GRANTED**.

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

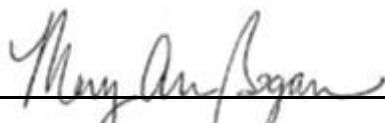
This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five 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.

July 5, 2024

DATE



MARY ANN BOGAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

MAB/nn/lam

APPENDIX

WITNESSES

For petitioner

T.C.L.

S.L.

J.J.

For respondent

None

EXHIBITS

For petitioner

- P-1 Email to Controversies and Disputes with initial submission
- P-2 Pro se residency appeal
- P-3 Initial notice of ineligibility due to non-residency in the District, dated August 24, 2022
- P-4 Withdrawal of Initial notice of ineligibility due to non-residency in the District, dated September 16, 2022
- P-5 Initial notice of ineligibility due to non-residency in the District, dated August 7, 2023
- P-6 Final notice of ineligibility due to non-residency in the District, dated August 29, 2023
- P-7 Letter from property manager of Bradford Pointe Apartments, dated August 23, 2023
- P-8 Rental payment receipts from June 2023 through September 2023
- P-9 Email from school district, dated January 4, 2023

- P-10 Email from petitioner to school district with copy of pertinent pages of petitioner's 2023 Bradford Pointe lease
- P-11 Petitioner's earning statements for various months from December 2022 through September 2023
- P-12 Petitioner's 2022 W-2 and earnings summary
- P-13 Petitioner's AT&T cell phone statement, dated September 2023
- P-14 PNC Bank Virtual Wallet Student Spend statement for V.C. for June 2023 through July 2023
- P-15 PNC Bank Virtual Wallet Student Spend statement for C.C. for July 2023 through August 2023
- P-16 American Express Delta Sky Miles Gold Card statement, dated September 2023
- P-17 Pertinent pages of various of petitioner's prior year rental leases from Bradford Pointe
- P-18 Screenshot from District's website
- P-19 Petitioner's work emails from June 7, 2023
- P-20 Entire rental lease for Bradford Pointe for January to December 2024
- P-21 Notarized affidavit from neighbor, Charlotte Marie Holden, dated February 21, 2024

For respondent

- R-1 Investigative report, dated June 1, 2 & 7, 2023
- R-2 Answer to Student Residency Petition