

New Jersey Commissioner of Education
Final Decision

K.P., on behalf of minor child, I.M.,

Petitioner,

v.

Board of Education of the Pascack Valley
Regional High School District, Bergen 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.¹

Petitioner and her daughter, I.M., have lived in the Township of Saddle Brook since at least 2011, in a home she owns. Beginning in January 2021, I.M. attended school in respondent's district as a non-resident student pursuant to a discretionary Special Education Tuition Contract Agreement (agreement) between respondent and the Saddle Brook Board of Education (Saddle Brook).² Per the agreement's terms, Saddle Brook agreed to reimburse the Board for educating I.M., a Saddle Brook resident, at Pascack Valley Regional High School (PVRHS) from January 11,

¹ Petitioner's response to the Board's reply was not considered by the Commissioner because *N.J.A.C. 1:1-18.4* does not permit the filing of a response to a reply.

² Pursuant to *N.J.S.A. 18A:38-3(a)* and *N.J.A.C. 6A:22-2.2*, school districts have the discretion to admit nonresident students with consent of the board of education.

2021, through June 16, 2021. Saddle Brook and the Board entered into subsequent agreements for school years 2021-2022 and 2022-2023.

In July 2023, Saddle Brook submitted another agreement to the Board for the 2023-2024 school year, which was I.M.'s final year of high school. The related admission application, completed by petitioner and dated June 23, 2023, states that petitioner and I.M. reside in Saddle Brook as they had in prior years. On July 27, 2023, the Board informed Saddle Brook that it rejected the agreement for the 2023-2024 school year. Petitioner was informed of same in writing on August 4, 2023, and requested a statement of reasons for the Board's decision. On August 7, 2023, the Board provided a written statement to petitioner which cited numerous reasons for their decision to reject the agreement, including her lack of civility and repeated, belligerent behavior toward the school dance coach, guidance counselor, and other staff members which created a substantial disruption at PVRHS.

Two days later, on August 9, 2023, petitioner attempted to enroll I.M. at PVRHS as a resident of Montvale by claiming that she and I.M. lived in Montvale with Fatima Spiradinova in Spiradinova's home. In support of the application, petitioner submitted Residency Affidavit #1: Oath of Non-Support by Non-Resident Parent (petitioner's affidavit), which contained conflicting statements. Petitioner's affidavit states that she and I.M. had resided in Spiradinova's home since August 2023, and that she was not capable of caring for or supporting her child due to her health. Her affidavit states in one section that Spiradinova was supporting I.M. without any financial contributions from her, and yet, in the same affidavit, she also states that she was supporting I.M. and remained responsible for her. Spiradinova submitted Residency Affidavit #2: Oath of Support for Non-Resident Child by District Resident (Spiradinova's affidavit), which states

that she was supporting I.M. due to financial hardship without any financial contribution from petitioner and that I.M. lived in her home.

On August 10, 2023, PVRHS notified petitioner in writing that they denied the enrollment application. Via letter dated August 22, 2023, PVRHS gave petitioner the opportunity to appear before the Board at an upcoming meeting to provide information to support her claim that she was now domiciled in Montvale. In that letter, PVRHS informed petitioner that “the timing of [her] alleged ‘residency’ in Montvale, being represented only three days after notification of the termination of the prior tuition contract relationship with the Saddle Brook School District, raises significant questions regarding [its] validity.” Exhibit P-166.

On September 12, 2023, after considering additional information petitioner presented to the Board at its meeting, PVRHS issued petitioner a Notice of Final Ineligibility (Notice) regarding I.M. In the Notice, PVRHS concluded that: petitioner was not domiciled in Montvale; petitioner was domiciled in Saddle Brook; and—even assuming petitioner was temporarily living in Montvale, despite the Board’s conclusion to the contrary—the reason for doing so was solely to receive a free public education at PVRHS, contrary to *N.J.A.C. 6A:22-3.2(c)(1)*. Accordingly, I.M. was not entitled to a free public education at PVRHS. The Notice informed petitioner that tuition for I.M.’s period of ineligible attendance could be assessed against her by the Commissioner, to be calculated at the approximate rate of \$134.38 per day.

Petitioner appealed, and the matter was transmitted to the OAL for a hearing which took place on May 14, May 21, and June 4, 2024. Petitioner submitted hundreds of pages of exhibits, called numerous witnesses, and also testified on her own behalf. As indicated in the Initial Decision, petitioner testified that she began living with Spiradinova in July 2023 because of

her health and her inability to live alone.³ Petitioner's testimony was contradicted by her therapist, who testified that petitioner has suffered from illness since at least 2006, does not need constant supervision by an adult, and can live alone. Petitioner further testified that she was living with Spiradinova because of financial issues. For her part, Spiradinova initially testified that she has helped three other family members who lived with her enroll at PVRHS and that she is very familiar with the required forms. However, she later testified that she is not very fluent in English, and that the forms were confusing to her. Spiradinova did not testify that she was supporting I.M. financially as if she were her own child, or that I.M. intended to live with her for any period longer than her final year of high school.

Ultimately, the ALJ held that petitioner failed to meet her burden, by a preponderance of credible evidence, to demonstrate that she was domiciled in Montvale. Specifically, the ALJ found that: (1) petitioner and I.M. are not domiciled in Montvale and remain domiciled in Saddle Brook; (2) because the Board declined to renew the tuition agreement with Saddle Brook for the 2023-2024 school year, petitioner applied for enrollment for I.M. at PVRHS as a resident of Montvale; and (3) petitioner used Spiradinova's Montvale address for the sole purpose of receiving a free education at PVRHS for I.M., in violation of law. Accordingly, the ALJ determined that petitioner owes the Board tuition payments for I.M. for the 2023-2024 school year in the amount of \$24,322.78.

In her exceptions, petitioner expresses her strong disagreement with the ALJ's determination. She reiterates the arguments she made during the OAL hearing – primarily, that various documents in the record (including bank statements, motor vehicle licenses, and

³ The parties have not provided the Commissioner with copies of the hearing transcripts.

registrations) coupled with witness testimony establish that she and I.M. moved to Spiradinova's home in Montvale in August 2023 due to her financial and health issues. Petitioner's exceptions also include vitriol toward the ALJ.

In response, the Board argues that the ALJ's factual findings, credibility determinations, and conclusions are supported by the record and should be adopted. The Board reiterates its position that petitioner's purported temporary residence in Montvale with Spiradinova—which commenced just days after receiving notice that I.M.'s non-residency student application for the 2023-2024 school year was denied—was for the sole purpose of receiving a free education in the Pascack Valley Regional High School District in violation of *N.J.A.C. 6A:22-3.2(c)(1)*.

Upon careful review, the Commissioner adopts the ALJ's comprehensive Initial Decision as the final decision in this matter. Under New Jersey law, I.M. is entitled to a free public education in the school district in which she is domiciled. *N.J.S.A. 18A:38-1(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)*. See *Somerville Bd. of Educ. v. Manville Bd. of Educ.*, 332 *N.J. Super.* 6, 12 (App. Div. 2000) ("A child's domicile is normally that of his or her parents."), *aff'd*, 167 *N.J.* 55 (2001). "Domicile" in this context means a "true, fixed, permanent home." *D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist.*, 366 *N.J. Super.* 269, 273 (App. Div. 2004). "[A] person may have several residences or places of abode, but only one domicile at a time." *Id.* at 274. The parent "'shall have the burden of proof by a preponderance of the evidence' to prove domicile in the school district." *Ibid.* (quoting *N.J.S.A. 18A:38-1(b)(2)*).

With respect to I.M.'s ineligibility under *N.J.S.A. 18A:38-1(a)* to attend school free of charge at PVRHS, the Commissioner concurs with the ALJ that the documentary evidence in the

record coupled with the hearing testimony confirms that petitioner remains domiciled in Saddle Brook, not in Montvale. Her true, fixed, and permanent home is in Saddle Brook. A temporary stay with Spiradinova in Montvale does not equate to a true, fixed, and permanent home in Montvale. Contrary to the assertions petitioner makes in her exceptions, nothing in the record supports a finding that petitioner relinquished her domicile in Saddle Brook at any point during the 2023-2024 school year.

More specifically, the fact that petitioner might have intended to list her home for sale in July 2024 fails to support her position that she was not domiciled in Saddle Brook during the 2023-2024 school year. Similarly, the fact that she might have leased certain rooms of her Saddle Brook home to other individuals fails to support her position that she was not domiciled in Saddle Brook. Additionally, having mail delivered to Spiradinova's Montvale address does not establish that petitioner is no longer domiciled in Saddle Brook. Furthermore, the fact that petitioner provided bank statements, motor vehicle licenses, and registrations listing the Montvale address as her own does not establish that she is no longer domiciled in Saddle Brook when considering the record as a whole. Accordingly, the Commissioner holds that I.M. was ineligible to attend school free of charge at PVRHS pursuant to *N.J.S.A. 18A:38-1(a)* because petitioner, with whom I.M. lives, was domiciled in Saddle Brook.

That said, relevant to the facts at issue herein, the Commissioner must consider two related exceptions to the general rule expressed in *N.J.S.A. 18A:38-1(a)* that permit a student to attend school at a district in which they are not domiciled under certain circumstances. First, if the student is living with a person other than his parent or guardian, and that person is domiciled in the school district and is supporting the student "without remuneration as if the student were

his or her own child,” then the student is eligible to attend school in the district pursuant to *N.J.S.A. 18A:38-1(b)*. *N.J.A.C. 6A:22-3.2(a)*. However, *N.J.S.A. 18A:38-1(b)* “requires a showing by the child’s parent or guardian that he or she is incapable of caring for the child due to ‘family or economic hardship’ and that the child is not residing in the district solely for purposes of receiving a free public education in the district.” *P.B.K. v. Bd. of Educ. of Borough of Tenafly*, 343 *N.J. Super.* 419, 428 (App. Div. 2001).

To satisfy the requirements of *N.J.S.A. 18A:38-1(b)*, the student’s parent or guardian must file, “together with documentation to support its validity, a sworn statement that he or she is not capable of supporting or providing care for the student due to family or economic hardship and the student is not residing with the other person solely for the purpose of receiving a free public education,” and the person who is providing care for the student must provide “[a] sworn statement that he or she is domiciled within the school district, is supporting the child without remuneration and intends to do so for a time longer than the school term, and will assume all personal obligations for the student pertaining to school requirements.” *N.J.A.C. 6A:22-3.2(a)(1)(ii)(1), (2)*.

Second, “[a] student is eligible to attend the school district pursuant to *N.J.S.A. 18A:38-1(d)* if the student’s parent or guardian temporarily resides within the school district and elects to have the student attend the school district of temporary residence, notwithstanding the existence of a domicile elsewhere.” *N.J.A.C. 6A:22-3.2(c)*. However, “no student shall be eligible to attend school based upon a parent or guardian’s temporary residence in a school district unless the parent demonstrates, if required by the district board of education, the temporary

residence is not solely for purposes of a student's attending the school district." *N.J.A.C. 6A:22-3.2(c)(1), (2)*.

The Commissioner concurs with the ALJ that I.M. is not entitled to attend PVRHS free of charge pursuant to either *N.J.S.A. 18A:38-1(b)* or *N.J.S.A. 18A:38-1(d)*. Petitioner has failed to demonstrate that she is incapable of caring for I.M. due to a family or economic hardship, or that her temporary residence in Montvale with Spiradinova was not solely for purposes of I.M. attending PVRHS. Initially, the timing of the commencement of petitioner's temporary residency in Montvale cannot be overlooked. It occurred suddenly, just days after the Board rejected the tuition agreement with Saddle Brook for the 2023-2024 school year. And although petitioner claimed that she was living in Montvale with Spiradinova out of necessity due to her health and financial issues, the record as a whole lacks credible evidence to support those claims.

While petitioner's affidavit states that she was unable to provide care for I.M. due to her health, nothing in the record establishes that her health problems rendered her unable to provide care for I.M., a high school student. As for any alleged economic hardship, petitioner's financial situation is unclear at best. The extent of her income, assets, and liabilities is unknown. The record suggests that she might have been receiving unemployment benefits of unknown amounts at some point during 2023. However, she did not provide bank statements or other documents to demonstrate whether her income could support her expenses. The record lacks any documentation to suggest that she had fallen behind on her mortgage payments or other bills.

Moreover, petitioner has failed to establish that Spiradinova was supporting I.M. without remuneration, with the intent to do so for a time longer than the school term. As noted,

petitioner's conflicting affidavit states both that Spiradinova was supporting I.M. without any financial contributions from her, and also that petitioner was supporting I.M. and remained responsible for her. While Spiradinova's affidavit states that she was supporting I.M. without any financial contribution from petitioner, she testified at the hearing that she is not very fluent in English, and that the forms were confusing to her. Neither petitioner nor Spiradinova produced any documentation to demonstrate that Spiradinova was supporting I.M. Petitioner also testified that I.M. would be leaving New Jersey for college at the conclusion of the school year, which undercuts any claim that Spiradinova intended to support I.M. for a time longer than the school term. Accordingly, the Commissioner holds that I.M. was not entitled to attend PVRHS pursuant to *N.J.S.A. 18A:38-1(b)* or *N.J.S.A. 18A:38-1(d)*, as she has not demonstrated that she is incapable of caring for I.M. due to a family or economic hardship, or that her temporary residence in Montvale with Spiradinova was not solely for purposes of I.M. attending PVRHS.

It is important to recognize that the ALJ's conclusions in this matter are intertwined with credibility determinations that are entitled to deference. Pursuant to *N.J.S.A. 52:14B-10(c)*, the Commissioner "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." "When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ's credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole." *Cavalieri v. Bd. of Trs. of Pub. Empl. Ret. Sys.*, 368 *N.J. Super.* 527, 537 (App. Div. 2004). "[I]t is not for . . . the agency head to disturb [the ALJ's] credibility determination, made after due consideration of the witnesses'

testimony and demeanor during the hearing.” *H.K. v. Dep’t of Human Servs.*, 184 N.J. 367, 384 (2005).

The ALJ found that petitioner “was loud and belligerent, and many times during the hearing she would digress with long monologues, which would increase in volume, speaking over everyone else. Many times, she would make disparaging comments about the witnesses, including offensive comments about their appearance.” Initial Decision, at 7. And although the record is replete with threatening emails sent by petitioner to various staff members at PVRHS, the ALJ found that petitioner “denies being threatening in her emails to Pascack and states that her language is not threatening—that it is just words.” *Ibid*. The Commissioner also finds that petitioner’s affidavit discussed herein, which contains conflicting information, is of questionable veracity. The Commissioner finds no reason to disturb the ALJ’s assessment of petitioner’s credibility.

Consequently, the Commissioner shall assess tuition against petitioner for the time period during which I.M. was ineligible to attend school at PVRHS. Pursuant to *N.J.A.C. 6A:22-6.2(a)*, if “petitioner does not sustain the burden of demonstrating the student’s right to attend the school district, . . . the Commissioner may assess tuition for the period during which the hearing and decision on appeal were pending, and for up to one year of a student’s ineligible attendance in a school district prior to the appeal’s filing and including the 21-day period to file an appeal.” *N.J.S.A. 18A:38-1(b)* provides that the Commissioner may order tuition “computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance.” As found by the ALJ, based upon a daily rate of \$134.38 and 181 days

of ineligible attendance, the total amount of tuition owed by petitioner to the Board is \$24,322.78.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed. The Board's claim for tuition payments is granted. Petitioner shall pay the Board for I.M.'s tuition costs for the 2023-2024 school year in the amount of \$24,322.78.

IT IS SO ORDERED.⁴



ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2024
Date of Mailing: October 9, 2024

⁴ 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.