

125-25R
OAL Dkt. No. EDU 08980-24
Agency Dkt. No. 209-7/24

New Jersey Commissioner of Education
Final Decision

M.C., on behalf of minor child, O.C.,

Petitioner,

v.

Board of Education of the Township of Howell,
Monmouth County,

Respondent.

The record of this matter, the hearing transcript, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner, M.C., pursuant to *N.J.A.C. 1:1-18.4*, have been reviewed and considered. Respondent, Board of Education of the Township of Howell (Board), did not file a reply.

This matter concerns the Board's determination that petitioner and her daughter were not domiciled in Howell during the 2022-2023 and 2023-2024 school years and its demand for payment of tuition for the period of the child's ineligible school attendance in the district. Petitioner appealed the Board's residency determination to the Commissioner. The Board filed an answer and counterclaim seeking payment of tuition for the 2022-2023 and 2023-2024 school years, and the matter was transmitted to the OAL for further proceedings.

Following a contested hearing at the OAL during which petitioner, Ronald Sanasac, Jr. (the Board's Assistant Superintendent for Business Administration/Board Secretary), and George Burdge, III (the Board's private investigator) testified, the Administrative Law Judge (ALJ) concluded that

petitioner and her daughter were not domiciled in Howell during the 2022-2023 and 2023-2024 school years, or during the current 2024-2025 school year. Accordingly, the ALJ ordered petitioner to reimburse the Board for tuition in the amount of \$29,837.85 for the 2022-2023 and 2023-2024 school years. The ALJ further ordered that petitioner is responsible for payment of tuition for the 2024-2025 school year until the date of her daughter's disenrollment.

In her exceptions, petitioner argues that: (1) the ALJ failed to acknowledge that the Board did not produce any credible testimony based upon personal knowledge of its witnesses to contradict petitioner's proofs establishing domicile in Howell; (2) the ALJ improperly disregarded and rejected petitioner's substantial proofs, including M.C.'s direct testimony and relevant documents, to support her claim that she and her daughter were domiciled in Howell; and (3) the ALJ erred by relying upon her own personal opinions and preferences to reach an erroneous conclusion about petitioner's domicile.

Upon review, the Commissioner adopts the ALJ's comprehensive Initial Decision as the final decision in this matter. Under New Jersey law, O.C. is entitled to a free public education in the school district in which she is domiciled. *N.J.S.A. 18A:38-1(a)*; *K.K-M. v. Bd. of Educ. of City of Gloucester City*, 463 *N.J. Super.* 24, 31 (App. Div. 2020). "A student is domiciled in the school district when the student 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 O.C.’s ineligibility to attend school free of charge in Howell, the Commissioner concurs with the ALJ that petitioner has not met her burden to prove by a preponderance of the evidence that she and O.C. are domiciled in the school district. In her thirty-eight-page Initial Decision, the ALJ rendered detailed findings of fact and conclusions of law pursuant to applicable statutes, regulations, and relevant case law. The ALJ found that petitioner owns a commercial property in Howell Township where she operates a daycare and preschool. However, the ALJ rejected petitioner’s claim that she and O.C. live at the daycare during the week, sleep in the facility’s break room, and shower in an RV on the property as not credible. The ALJ found that petitioner’s primary residence, where she and O.C. are domiciled, is a single-family home located in Brick where both petitioner and O.C. have their own bedrooms and for which petitioner holds a primary residential mortgage.¹

With respect to petitioner’s credibility, the ALJ noted inconsistencies in her testimony regarding the sleeping and bathing arrangements in Howell. Petitioner initially described the sleeping quarters as a “studio” with a kitchen and bathroom. But during cross-examination, petitioner admitted that the “studio” was the break room used by daycare staff who sometimes arrive as early as 5:30 a.m. and do not depart until 7:00 p.m. Petitioner claimed that she slept on a pull-out couch while her seven-year-old daughter slept on a toddler bed. Because the daycare does not have a bathtub or shower, petitioner testified that she and her daughter shower in an RV on the property. However, according to petitioner, the RV had only been on the property for approximately one year,

¹ According to the record, O.C. told a teacher that she lived in a nice house in Brick with a pool, which resulted in the Board’s commencement of a residency investigation.

which raises questions about where they bathed previously. When questioned further, petitioner stated that at times they bathed at the Brick home. The ALJ found this testimony to be inconsistent with petitioner's earlier testimony about how impractical it would be for her and her daughter to commute between Howell and Brick each day.

The ALJ also found petitioner's testimony regarding her personal vehicles to be inconsistent and contrary to credible observations made during the Board's investigation. While petitioner testified that her personal vehicles were "principally garaged" at the Howell property, investigators retained by the Board who conducted video surveillance in March 2024 did not observe any of her personal vehicles in Howell after the business closed for the evening. On three occasions, the investigators personally observed petitioner's personal vehicles at the Brick property. On at least one occasion, petitioner and her daughter were seen exiting the Brick property on a weekday morning and departing in one of petitioner's personal vehicles. When questioned further, petitioner claimed that she allowed her boyfriend, her family, and her staff to use her personal vehicles, which is why they were not observed in Howell in the evenings. In sum, the ALJ explained:

[I]t stretches credulity that everyone, from staff members to boyfriend and family, but M.C. uses both her Brick residence and her personal vehicles during the weeknights; that she and her child either use the RV that has periodically been on the property over the past year or they go back and forth to the Brick property to bathe; and that she sleeps on a pull-out couch and her seven-year-old child sleeps on a toddler bed in the break room of her business during the school year.

[Initial Decision, at 25.]

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. N.J. Dep't of Human Servs.*, 184 N.J. 367, 384 (2005). Having carefully reviewed the record and the hearing transcript, the Commissioner finds no reason to disturb the ALJ's credibility determinations.

As for petitioner's exceptions, the Commissioner does not find them to be persuasive. First, petitioner argues that the Board did not present any testimony or proofs to contradict petitioner's testimony that the Brick home is her vacation home for use on the weekends. However, petitioner appears to misunderstand the burden of proof in this matter. The burden of proof belongs to petitioner, not the Board. *D.L.*, 366 N.J. Super. at 274 (quoting *N.J.S.A.* 18A:38-1(b)(2)). The Commissioner finds that it was not arbitrary, capricious, or unreasonable for the ALJ to decide, given the totality of the evidence, that petitioner's testimony regarding the Brick home was not credible.

Second, petitioner argues that the ALJ erroneously rejected her documentary proofs that support the conclusion that she is domiciled in Howell, including a property tax bill for her daycare, a commercial driver's license for the school buses that she operates, a utility bill, health insurance information, a social security card, personal vehicle registrations, and other documents containing the Howell address, which predate O.C.'s attendance at school in Howell. The Commissioner holds that it was not arbitrary, capricious, or unreasonable for the ALJ to find, given the totality of the evidence, that the documents produced by petitioner were not dispositive on the issue of domicile. The ALJ reasonably concluded that the documents needed to be viewed through the lens of common sense.

Third, petitioner argues that the ALJ improperly relied upon her own personal opinions and preferences to reach an erroneous legal conclusion regarding petitioner's domicile. In essence, petitioner claims that the ALJ took issue with her lifestyle choices in a biased manner. The Commissioner rejects petitioner's assertion as unsupported by the record. The ALJ thoughtfully and carefully considered the evidence, including the witness testimony, when rendering her findings and conclusions. The ALJ's credibility determination regarding petitioner is supported by petitioner's own inconsistent testimony as explained herein, as well as the fact that her testimony simply did not hang together with the credible observations of the Howell property made by Burdge and Sanasac. The Commissioner does not agree with petitioner that the ALJ's decision was influenced by the ALJ's personal opinions, preferences, or other bias.

Turning to the Board's counterclaim, 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."

Based upon a daily rate of \$72.93 for the 2022-2023 school year and a daily rate of \$91.92 for the 2023-2024 school year, the ALJ concluded that petitioner owes the Board \$29,837.85 in tuition for both school years. However, the record lacks information regarding the number of days of ineligible attendance during those school years. Additionally, as noted by the ALJ, the record lacks information regarding O.C.'s period of ineligible attendance as well as the daily tuition rate for the

2024-2025 school year. Therefore, the Commissioner is unable to assess tuition against petitioner at this time.

Accordingly, the Initial Decision is adopted as to the ALJ's conclusion that petitioner did not meet her burden of proof in establishing domicile in Howell, and the petition of appeal is hereby dismissed. The matter is remanded to the OAL for further proceedings to develop the record regarding the number of days of O.C.'s period of ineligible attendance for the 2022-2023, 2023-2024, and 2024-2025 school years, and the per diem tuition rate for the 2024-2025 school year, so that the Commissioner may rule upon the Board's counterclaim and the tuition amount owed may be calculated.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'L. A.', is positioned above the title of the Commissioner of Education.

COMMISSIONER OF EDUCATION

Date of Decision: April 14, 2025
Date of Mailing: April 16, 2025



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 08980-24

AGENCY DKT. NO. 209-7/24

M.C. ON BEHALF OF O.C.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF HOWELL, MONMOUTH
COUNTY,**

Respondent.

Richard J. Kaplow, Esq., for petitioner

Janice V. Arellano, Esq., for respondent (Cleary Giacobbe Alfieri Jacobs, LLC,
attorneys)

Record Closed: November 26, 2024

Decided: January 30, 2025

BEFORE **TAMA B. HUGHES, ALJ:**

STATEMENT OF THE CASE

M.C. on behalf of minor child, O.C. (collectively “petitioner”), challenges the decision of the Board of Education of the Township of Howell, Monmouth County (“Board” or “respondent”), that she and O.C. are not domiciled in the Township of Howell School

District (District) and that O.C. cannot continue to attend its schools for free as a resident of the District. The Board answered the petition and filed a counterclaim demanding tuition repayment for the 2022/2023 school year and the 2023/2024 school year in the aggregate amount of \$29,837.85.

PROCEDURAL HISTORY

On or about July 1, 2024, petitioner filed a residency appeal with the Department of Education, Office of Controversies and Disputes. The transmittal was in the form of an emergent application/expedited hearing. The emergent application was scheduled to be heard on July 10, 2024. On the scheduled hearing date, petitioner withdrew the emergent application, and a hearing date for the underlying matter was set for August 1, 2024. See July 10, 2024, Prehearing Order. On August 1, 2024, the matter was heard. The record remained open to allow the parties the opportunity to obtain the transcripts and submit summation briefs. Upon receipt of the same, the record closed on November 1, 2024; however, the record was reopened by the tribunal to obtain additional documentation.¹ Upon receipt of the requested documentation, the record closed on November 26, 2024.²

DISCUSSION

M.C. testified that her seven-year-old daughter, O.C., will be attending second grade at the Ardena School, located in Howell Township, in September 2024. Her daughter is a well-rounded child who does well in school.

She is familiar with the term “domicile” and stated that her domicile is xxx West Farms Road, Farmingdale, New Jersey (Howell property). She has owned the property since 2015, and she and her daughter have lived there a majority of the time since 2017.

¹ Petitioner’s counsel objected to the consideration by the tribunal of any surveillance log, or document that was not offered by either party at the hearing, or not the subject of the testimony by any witness at the hearing. The documentation in question, which includes documentation from the petitioner as well as the respondent, was the subject of testimony by both parties’ witnesses.

² An Order of Extension was entered in this matter on January 13, 2025 extending the Initial Decision filing date to February 24, 2025.

M.C. runs a daycare/camp from her residence called Home Sweet Home Childcare Center/Camp Royale and is the sole owner of the business. The property is located on 2.1 acres and has a 3,200 sq. ft. building, which is broken down into classrooms for each age group. There is a 47,000-gallon pool on the property, a playground, and a patio with an awning. She has three school buses that are used to operate the daycare for both before and after school care. She herself has a commercial driver's license.

She does not drive her daughter to school; the District picks her daughter up from the Howell property and takes her to school. As part of her business, she does provide bus services to other children to and from school. Some of the districts she provides transportation for are clients who live in Asbury, Neptune, Jackson, and Lakewood. She also uses the bus at times to go shopping for supplies for the school and for her own personal items.

In addition to the three buses, she owns several vehicles—a Land Rover, a Toyota, and a Mercedes. She use to own a Tahoe but has not owned that since September 2023. The vehicles are principally garaged at the Howell property—not at her property located in Brick Township. She went on to note that multiple people drive all of her vehicles—herself, her staff, and her boyfriend. Therefore, the absence or presence of any one of the vehicles at one property or another is not indicative of where she and her daughter are physically located.

Also located on the Howell property for the past year, is her boyfriend's recreational vehicle (RV). It is for recreational use, and she also uses it to store clothes and other items that she does not want to store in the building. She has, on occasion (approximately ten times) over the past year, spent the night in the RV. The RV is self-contained, so it does not require an electrical or water hookup. Therefore, comments in the Board's investigative report that there are no hookups, and therefore, no one lives in the RV, are conclusory and lack foundation. She is aware that the Board's investigator's report also stated that no one lives at the school or in the RV because he didn't see a TV or lights on after 8:00 p.m. Such conclusions lack merit because no one can see into either the building or the RV because there are blinds. No one from the District has ever been inside either location. She also questioned what anyone expected to see at night when

there is a young child and they don't venture out at nighttime. While the Board's Assistant Business Administrator, Ronald Sanasac, Jr. (Sanasac), claims that he consulted with town officials about the property and that there was no living space or kitchen—again, such statements are inaccurate.

In describing the residential part of the Howell property, M.C. stated that there was a studio located within the building that has a pull-out bed for her and a bed for her daughter. There is a kitchen and a bathroom. It is the same bathroom that the daycare/campers use, but there is more than one bathroom. There is a closet and drawer where she keeps both of their clothes.

O.C. does not have friends over to play a majority of the time, primarily because the children that come to the daycare are her friends—so she plays with the other kids when she gets home. She does not make it publicly known that she resides at the property at night with her daughter because it is private. She acknowledged that there have been occasions where a child did not get picked up until later in the day or evening. There have also been occasions where she has offered daycare on a Saturday. It depended on the business' needs.

In describing their weeknights, M.C. stated that her daughter watches things on her iPad, and on occasion, they watch TV. The daycare is equipped with several TVs.

She is familiar with the terms of the August 2023 settlement agreement that she reached with the Howell Township Board of Education. She was cognizant of item #3 in the agreement, which stated that should it ever be adjudicated that she was not domiciled in Howell, she would be responsible for tuition. There has never been an order or ruling by an administrative law judge (ALJ) or anyone else for that matter that has determined that her residency was somewhere other than Howell Township.

She has read the detective report that was generated by the investigator that the Board hired in this matter and was aware that one of the findings was that she was seen returning to her property located in Brick Township at the close of business. The finding was incorrect because she and her daughter do not go to their "vacation" or "shore" home

located in Brick Township every night. They go there on the weekends or when they want to have a getaway from work and the camp that she runs. The Brick house is located on a lagoon and has a pool.

M.C. went on to state that her daughter has been affected by what has been happening with her school placement. In April 2023, the school sent her home with a letter that stated that her child was ineligible to attend school in the District. Upon reading the letter, she (M.C.) called the Board of Education (BOE) and asked them what documents they needed. The next day, she went to the BOE offices and submitted her tax bill, her utility bill, O.C.'s insurance, and their social security cards. She also brought current and old driver's licenses in to show that even prior to her daughter attending school in the District, she resided at the West Farms Road property.

When she went to the BOE office, she met with Business Administrator Sanasac, who informed her that it was his job to ensure that only taxpayers of Howell attend school for free in the District and that she was a resident of Brick Township. According to M.C., she told Sanasac that she was a taxpayer and that her house in Brick was her shore home, which she goes to whenever she wants, using the following week as an example because it was spring break, and they were probably going to go there for the week. She also told Sanasac that she and her daughter "eat, sleep, and 'shit' at xxx West Farms Road."

In response, Sanasac asked her if she had received the letter from the BOE that the matter was going before the BOE. When she stated that she had not, Sanasac retrieved a copy of the letter, which was notably dated that same date that she was in the office speaking to him (April 4, 2023). The letter stated that the issue would be heard before the BOE on April 19, 2023, to remove O.C. from the rolls of the District. The address on the letter was to her property located on West Farms Road. She later added that weeks later, she received a copy of the same letter at her property located in Brick. According to M.C., she typically gets junk mail at that address. All of her mail is sent to her property located on West Farms Road, including bills for the Brick property.

She attended the April 19, 2023, Board meeting with her attorney and presented multiple documents proving her residency in the District. The attorney for the Board started talking about the zoning where her business was located and how it was zoned as a mixed use. M.C. went on to comment that prior to the meeting, in one of the letters that Sanasac had sent to her, he threatened her livelihood, bringing into play her prior applications for renovations that she had filed with the township for variances between 2018–2022 and that they may need to be revisited. When the Board attorney started commenting on the zoning in the area, her attorney reiterated to the Board and its attorney that variances and ordinances, or the condition of the house, had no place in determining eligibility to attend school in the District.

In discussing the Board’s investigator’s report that he surveilled her house in Brick and that he saw her (M.C.’s) silhouette in the window, the pictures she saw in the report did not show a silhouette, nor were there any pictures of her or her daughter at the Brick property in his report. Additionally, her home in Brick has auto lights and blinds.

M.C. went on to state that at no time did she falsify her application to the Board regarding residency. Nor was she untruthful with the Board that she intended to make the Howell property her residence—at all times, the Howell property has been her residence. She is familiar with the regulations regarding housing and immigration status. More specifically, she looked up and is familiar with N.J.A.C. 6A:22-3.3³, which has the same words used by the Board to determine eligibility for resident status.

According to M.C., over a period of several years, she applied for and was granted several variances for the Howell property. (R-6.) None of the variance applications dealt with eligibility to attend school in the Howell School District. At no time has she been found to be noncompliant with any of the zoning provisions or requirements for the District. However, the school district has consistently given different reasons why she is not a resident of the District. One such reason was because she did not have a Certificate of Occupancy (CO) for the Howell property, which was wrong because she has had a CO

³ N.J.A.C. 6A:22-3.3—Housing and Immigration Status: “(a) A student's eligibility to attend school shall not be affected by the physical condition of an applicant's housing or the applicant's compliance with local housing ordinances or terms of lease.”

for the property since 2015. Another reason was because a particular variance does not allow someone to live at the property, which again was wrong.

In sum, she is not looking to have her child go to a better school district, which is typically why actions are filed. There is really no difference between the Howell Township and Brick Township schools. What the Board is suggesting is that she start her day at the Howell property, drive her child forty minutes to Brick Township to drop her daughter off at school, drive back to the Howell property, and at the end of the day, go back to Brick Township to pick her daughter up to then turn around and drive back to the Howell property to end the day. She is baffled that it believes that she should do that. This is impacting her and her daughter.

On cross examination, M.C. stated that she purchased the Howell property in 2015 and has considered it a primary residence since that time. The property is located in an R-2 zone, which can be residential or a special use, such as a church or school. She could not say for real estate purposes whether the property was identified as a commercial or residential property. (R-10.) Nor does she know her neighbors, the closest one being quite some distance away, and she does not socialize with them. Any statement attributed to her neighbors that they (the neighbors) did not see her or her daughter after a certain time should be questioned because she doesn't even know who her neighbors are, nor do her neighbors know them.

In describing the living space at the Howell property where she resides Monday–Friday, she stated that there is a studio area that has a commercial kitchen, a TV, toys, a desk, a pull-out couch where she sleeps, and a toddler bed, which her seven-year-old daughter sleeps on. She stays there during the week because of her work schedule. Her work day starts at 4:30 a.m. and doesn't stop until roughly 10:00 p.m. It wouldn't make sense to commute to Brick. M.C. acknowledged that the studio where she sleeps is accessible to her staff because it is their break room, and they can watch TV. Staff start arriving to the school at 5:30 a.m. As previously stated, she (M.C.) gets up at 4:30 in the morning. For the most part, staff remain on site until all of the students/campers leave. On occasion, however, she herself takes care of the remaining children until their parents

get there. M.C. went on to add that she has been a “slave” to her business for over twenty-seven years.

When asked about her business, M.C. stated that if her business was not as successful as it was and if she had to choose which mortgage to pay, she would pick the Howell property, which is in an LLC. She purchased the house in Brick in February 2017, for which she holds a primary mortgage.

M.C. stated that she was cognizant of the enrollment documents that a district may require, such as tax records, deeds, mortgage, driver’s licenses etc. She affirmed that her driver’s license listed the Howell property as her address, which is what she presented to the District to prove residency. She also provided her daughter’s social security card, her health insurance card, and utility bills.

When asked who resides in the Brick property, M.C. stated that she and her daughter do on the weekends. During the weekdays, her boyfriend may stay there, or family members may stay there when they come to visit. Her boyfriend occasionally stays with her at the Howell Property—staying in the RV during one of the ten times that the RV was used at the property. When questioned why she would stay in the RV, M.C. gave an example of a time when she went to a concert and came home late. She did not want to disturb the morning functions of the school—buses coming in and out—or risk parents seeing her with a “bedhead.” M.C. went on to add that the RV, which is a mobile home, is not insignificant—it has two bedrooms and sleeps eight. It has a kitchen and bathroom with a shower. In describing the facilities at the West Farms Road property, M.C. stated that the building does not have an inside shower; however, the RV does. During the week, they either go outside to the RV and shower or go to Brick to shower and return. She cited this past spring when she had work done at the Brick property. She had to repeatedly go back and forth to the Brick house to interview contractors and check on the work that was being done.

In discussing her earlier testimony that her business was shifting and adjusting, M.C. elaborated, stating that she had added a third school bus in her fleet and added more before and aftercare programs. She has seventeen staff members, all of whom

know that she and her daughter reside there. She has also introduced more weekends and extended evening hours, with some students at times staying at the school until 8:00 p.m. Not all of the programs that she offers are listed on her website.

She purchased the Howell property to continue her childcare business. The school capacity is fifty-two. The property had previously been the site of another school, and a church before that. Prior to that, she had leased a space. M.C. went into the responsibilities of owning her own business—care and upkeep, offering services when schools are closed, such as during the holidays or snow days. Her business is closed nine days out of the year, which include major holidays. When she bought the property, it was already a school, but she renovated the property so that she could have infants and comply with the firecode requirements. In 2018, she obtained variances to put more things on the property such as a poll barn, an additional bathroom with toilets and sinks, and an additional infant classroom. Residency was never brought up or questioned when she was applying for the variances. She also put solar panels on the property and a sign outside. There was an existing parking lot, but she obtained a variance to increase the parking capacity. The parking lot can accommodate up to fifteen cars at this time. She parks her personal vehicles in the parking lot. The RV is parked on the grass.

M.C. was also questioned about the house located in Brick. The house has four bedrooms and two and a half baths and is in a neighborhood. Her daughter has her own bedroom at the house. She does not believe that it is Howell's right to question the fact that her daughter sleeps on a toddler bed in a studio room at the Howell property but has her own bedroom with a bed at the Brick property. She is a self-made person who owns and operates her own business. M.C. reiterated that the Brick property is her second home where she also parks her personal vehicles. They go there on the weekends and return to the Howell property first thing Monday morning between 6:00–9:00 a.m. She estimated that it was fifteen miles between the two properties and that it takes approximately thirty to fifty minutes to get from one property to another depending on the time of day and traffic. Regarding extracurricular activities, O.C. takes horseback riding in Howell once a week after school.

When asked about the certification that she had submitted in September 2023 regarding residency, M.C. stated that through the certification, she confirmed that she and her daughter lived in Howell and that her daughter had a right to attend school in the District. (J-4.) The certification stated that she would spend a majority of the school days at the Howell property because that is what the District required her to say. The District refused to allow her to put a definition in the certification for the word “majority.” M.C. went on to comment that she is at a minimum in Howell at least 260 days a year—she knows this because she provides food for the children who attend her school.

She understands that the District has an obligation to ensure that only children that reside in the District attend school there. M.C. acknowledged that she was an LLC taxpayer, adding, however, that she is a single LLC owner. She was aware that the District is required to send eligibility notices to the parents/guardians of children whom they believe do not reside in the District. What she takes umbrage over is the fact that they sent the notice home with her then-six-year-old child in 2023, when she (M.C.) had literally been in the school earlier in the day volunteering. When she went to the Board’s office the following day, Sanasac asked her if she had received the letter that had been sent, which was literally postdated that same day. M.C. went on to add that Sanasac had called her a week prior to sending the letter home with her daughter and claimed that she lived in Brick, to which she said no. Sanasac then proceeded to go into how he was tasked with ensuring that only children of taxpayers who live in Howell can attend schools there. He told her at that time that he was going to have a letter prepared and sent to her, and a week later, her daughter came home with a letter. M.C. reiterated what happened when she attended the Board meeting and how her attorney told the Board how zoning had no place in the determination of residency—where she showered or the condition of the house had no place in a residency determination.

When questioned about the fact that the property is zoned as a commercial property, M.C. stated that there is nothing in the zoning laws or otherwise that says that as a business owner, she cannot be at her business twenty-four hours a day, seven days a week, noting that domicile is where your physical body is. According to M.C., she and her daughter are physically located at the Howell property every day of the week. O.C. does not attend school in Brick because she does not live there. She (M.C.) would not

even have sufficient documentation to show that she and her daughter resided at the Brick property because all relevant documentation has the Howell property address on it. She again reiterated how she would have to wake up in Howell, drive her child forty minutes to Brick, and then turn around to go back to Howell, only to go back and forth at the end of the day.

When questioned about relatives visiting, M.C. stated that her family visits her as often as they like. She is able to provide them a place to stay in Brick and use of her car when they visit.

When asked why her daughter would inform her teachers that she lived in Brick Township, M.C. conjectured that when her daughter is off from school, they go to the Brick property and they refer to those days off as “home days.” They also have a home in Myrtle Beach, and she also has an RV. She doesn’t know what context her daughter was saying it in or how they questioned her. The reality is that she (M.C.) does have a home with a pool in Brick. That is true, but she doesn’t live there. M.C. speculated that O.C. may not talk about the Howell property as much because they are always there and there is nothing special about it. When she is at the Howell property, she has to “share” everything. There are not many things that are off limits to the other children who attend the school at the Howell property, and her daughter is not allowed to bring out her personal iPad to play with during school hours.

M.C. went on to state that she spoke to O.C. at length over what she said to her teachers; however, her daughter could not recall what she said to the school staff. She repeatedly asked the school officials what her daughter had specifically said to them, but they never really told her, instead citing variances, zoning, and her housing conditions. What she thinks triggered all of this was the fact that on several occasions, when she was running late and drove her daughter to school in one of her buses with the logo on it, the school decided to check into her and grasp at straws on her living conditions. Regardless of how this came about, she believes that it was inappropriate for the school to question her and her daughter’s residency.

Ronald Sanasac, Jr. (Sanasac), Assistant Business Administrator for the Board, testified on behalf of the respondent. He handles the overall financial affairs of the District that involve non-teaching items such as residency issues, food services, transportation, etc.

In discussing residency issues, he stated that registration into the school system is centralized in his office. Registration requires certain proofs by the parents. Sometimes it comes to their attention that a family is no longer domiciled in the District or is falsifying their residency. To look into the latter, they use various methods of determining residency—sometimes it involves a private investigator, other times they do the investigation themselves, or the issue just resolves itself.

He recalls when O.C. was enrolled in the District for Kindergarten (2022/2023). At the time of enrollment, they believed that the documentation presented by M.C. (driver's license and real estate tax bill) was appropriate for enrollment; however, concern arose in early 2023 that O.C. did not reside in the Howell Township. This was based upon commentary by O.C. that she did not live in Howell, she lived in a nice house in Brick. This caused O.C.'s teacher and the guidance counselor to question the statement, particularly since they saw how the child arrived at school.

He has had cases in the past where the children have disclosed where they live and it wasn't in the District. There is a process that takes place when a residency question arises. A letter from the school is sent to the parents that there is reason to believe that the registration information was not accurate, asking the parents to contact central registration to provide proof or discuss the issue. Normally the issue gets resolved.

In M.C.'s case, he had a conversation with her and explained the process and said that it might be best not to go through the process and that tuition would be due if it turned out that the registration was fraudulent. He conveyed to her something to the effect that "we all know what we do and we look in the mirror and why do we not make this a problem." He said that to her because the process is not enjoyable for anyone and normally resolves itself.

He sent a notice of ineligibility to M.C. twice—once in 2023 and the second time in 2024. The notices are required by statute. The first Notice of Final Ineligibility was sent in May 2023. (J-2.) The letter set forth the township’s determination that O.C. did not live in the District. This was based upon O.C.’s statements to school personnel, investigator’s observations, and township records.

M.C. appealed the township’s determination, and ultimately, the matter settled. He recalls that at the time of settlement, M.C. stated that they were going to begin living there anyway. Given the fact that the school year was at an end, and M.C. represented that she was going to begin living at the Howell property, the agreement was entered into allowing O.C. to continue attending school in the Howell district. However, the agreement also contemplated that if it was ever adjudicated that M.C. and O.C. did not live in the District, she would be responsible for all of the tuition for 2022/2023 and 2023/2024.⁴ (J-3 and J-4.) As a result of the settlement agreement, O.C. continued in the District in the 2023/2024 school year, attending first grade at the Adelphia school.

While O.C. entered into first grade in the District, there was still a concern about residency, particularly after other issues were raised, such as transportation. As a result, a private investigator was retained—George Burdge (Burdge) from Wil-Bur Investigations—to conduct an investigation into residency. The reason an investigator was retained was because it is the District’s obligation to ensure that taxpayers do not pay for the education of students from another jurisdiction. In giving an overview of the investigative report, Sanasac stated that Burdge observed the property on various dates and times and locations—both physically and through other means of observation. Through this investigation, it was determined that there was no one in residence at the Howell property during non-business hours. The investigator also observed the Brick residence and observed people coming from the Brick residence and no known vehicles coming back to the Howell property at various times. Also reviewed as part of the investigation were township records such as zoning requirements and various variances that had been filed. None of the documents in question gave any indication that the property was being used as a residence.

⁴ The agreement referenced is not a formal settlement agreement. It consisted of an email and follow-up certification by M.C. (See J-3 and J-4.)

He is also personally familiar with the Howell property because for years, he has driven by the property to and from his own home and when he goes out shopping. The structure on the property is a small white masonry building with a circular drive in the front. The building has always been commercial. He is aware that students that attend the District school attend Home Sweet Home's before and after school program. O.C. has also been observed coming to and from school in the Home Sweet Home bus as well as private vehicles.

Based upon the investigation, a new preliminary notice was filed and was presented with the superintendent's recommendations to the Board, after which a Final Notice of Ineligibility was issued on July 10, 2024. The Preliminary Notice of Ineligibility and Removal not only placed M.C. on notice of the pending action, but it also informed her that the District would be seeking back tuition in accordance with the law. According to Sanasac, tuition is based upon the average price per student multiplied by the number of days that the student attended in the District. For the 2022/2023 academic year, the rate was \$72.93/day x 181 days and for the 2023/2024 academic year it was \$91.92/day x 181 days in the aggregate amount of \$29,837.85. (P-2 and P-3.)

Sanasac went on to state that in his position, it is his responsibility to ensure that residency records are accurate. The taxpayers support the schools, and it is their responsibility to ensure that the money is well and appropriately spent. He makes budget reports routinely to the Board, and as part of his responsibility, he is required to ensure the accuracy of his reporting. The biggest cost to the District is the cost of personnel, which is directly related to the number of students in the classroom. More students translates into more personnel required to teach them.

On cross examination, Sanasac acknowledged that he did not participate in the investigation that was conducted by Burdge. He did, however, make his own observations of the property over a period of two years—passing by the property over forty or more times looking for signs of activity such as anyone living there, parked cars, the position and conditions of things, etc. He did this not only because he takes his job seriously, but because he also lives a mile away and travels on the road frequently. When

asked, he hedged his answer to the question of whether he believed M.C. and O.C. lived at the Howell property. He did say that in each instance that he passed the property at the close of the day, he did not see anything indicative of people living at the property—no activity, no child running around kicking a ball, no curtains pulled etc. He was cognizant of the fact that M.C. owns several different properties and that M.C. represented that she and O.C. went to the Brick property on the weekends and lived at the Howell property during the week.

When questioned about the settlement agreement that had been entered into the year prior, Sanasac stated that he spoke to their attorney (Jan Wouters, Esq.) prior to entering the agreement. He had some concerns that they were settling the matter, particularly because the allegations had been proven. However, given the timing of the case—end of the school year—and the wording of the agreement, and urging by the judge, they decided to settle the matter.

Based upon the investigation that was done in this matter and what he himself had observed over a period of time, he did not believe that M.C. resided at the Howell property 260 days a year. She may work at the property that many days, but he did not believe that she lived there during that time period. When asked if he had any personal knowledge of the living arrangements within the Howell property, he stated that the only personal knowledge he had was what the zoning officials told him and what was contained in the variance applications. He has not physically been in the property, nor do they ever go into a home on residency issues. He is aware that occasionally, an RV has been parked out front. He has not been in the RV, nor does he believe Burdge has seen the inside of the RV.

When asked if the physical living conditions are taken into consideration in determining residency, he stated that they are not—agreeing that the physical condition of a sleeping place does not impact eligibility. Sanasac went on to say, however, it is not the condition of the place, it is where M.C. and O.C. actually place their head at the end of the day that determines residency. In questioning where M.C. pays her taxes, Sanasac stated that he assumes that she pays for the business taxes in Howell and the residential property taxes in Brick.

He personally has never spoken to O.C. about where she lives, nor does he know who spoke to her. However, it is his understanding that in conversation with her teacher and guidance counselor, O.C. told them where she lived. He believes he got an email to that effect, and he recalls several calls to that effect.

In discussing the April 2023 letter that he sent to M.C., Sanasac was asked why he wrote the letter to M.C. In response, he stated that he works very hard at trying to do the right thing. It is not so much collecting the daily rate, rather the taxpayers shouldn't have to pay for students who do not reside in their District. In going through the letter—specifically that O.C. stated that she lives at a big house with a pool—Sanasac acknowledged that both the Howell property and the Brick property have pools. In his letter, he also stated that M.C. never obtained a residential certificate of occupancy—none of the applications or permits indicated a kitchen, bedroom, or living quarters. He knows that from the municipal code inspector and application. When presented with the fact that M.C. testified that the Howell property does in fact have a bedroom, kitchen, and living quarters, and whether M.C. lied, Sanasac stated that his statement in the letter was from the documentation he obtained from the township and speaking to the code enforcement officials and fire marshal. He again acknowledged that he had never been in the property.

In questioning Sanasac how O.C. was transported to school, he stated that he is aware that O.C. was transported by various modes, including the District school bus and the Home Sweet Home bus. He went on to state, however, that O.C. was transported on the District bus based upon M.C.'s representation that they lived in the District.

George Burdge, III (Burdge) testified on behalf of the District. He is the owner/operator of Wil-Bur Investigations, Inc., a licensed private investigative firm. Prior to becoming a private investigator, he was an officer with the Monmouth County Park System. Over the years as a private investigator, he has conducted multiple residency investigations on behalf of not only the Board but other municipalities as well.

With regard to the instant matter, he was first contacted by the Board in March/April 2023 to conduct a residency investigation, which is still ongoing. He has family that lives in the area and travels the road where the property is located two or three times a week. Therefore, he has had multiple occasions to observe property at various times of day and night.

According to Burdge, when the issue first arose, M.C. claimed that when she had filled out the school application, she put the wrong address. When the matter got to the judge, she represented that going forward, she was going to use the Howell property as her primary residence. This turned out to be false.

The initial report on this matter was rendered in December 2023, and the investigation was picked up again in March 2024. The property in question is located in a rural commercial area. It is approximately two and a half acres and has a business on it. When he began surveilling the property, there was a silver vehicle located in the back of the property.

As part of his investigation, he spoke to several people about the property—one of which was the neighbor across the street who informed him that no one lived overnight at the property. The property has a security light in the front of the building. M.C.'s vehicle is a Land Rover; however, she has had three separate vehicles since the commencement of the investigation.

He also installed a motion-activated camera across the street from the property for thirty days. Review of the footage found that everyone departed from the property around 7:30–8:00 p.m. The only vehicles remaining on the property at night were the school buses, the silver car parked by the dumpsters, and occasionally an RV, which he estimated to be around 24'–26'. M.C.'s car did not remain on the property overnight, nor did he see M.C. leave during the day to go to Brick and return to Howell. Staff would start to arrive at the property around 7:30 a.m. He also followed M.C. from Brick to Howell on a couple of occasions—initially he could not recall what particular day of the week he followed her but later recalled that one of the days was a Thursday, March 28, 2024, and the other two observations took place mid-week—not on a Monday or Friday. Burdge

went on to note that there were a couple of vehicles located in M.C.'s driveway at the Brick property—a pick-up truck, a Mercedes, and the Land Rover. Prior to the Land Rover, M.C. had a Tahoe. At one point there was also a Lincoln and another rental vehicle located at the Brick house.

On one of the occasions that he conducted surveillance, around 5:30–6:00 a.m., he drove by the Brick residence, which is located in a cul-de-sac, and clearly saw M.C. silhouetted in one of the windows. After passing the house, he went to the end of the street and waited until M.C. and her daughter drove past him in the Land Rover and went to the Howell property around 6:30 a.m. Burdge commented several times about how fast M.C. drove, further commenting that it generally takes a little over a half hour to get from one property to the other. He followed them until they turned into the Howell property.

Based upon his initial investigation, he believed that M.C. did not reside at the Howell property. There was no activity after 8:00 p.m. during the times he had the property under surveillance. There were no lights on or motion. In his opinion, when you have a child, it stands to reason that there would be lights on in the house, such as the reflection of a TV or computer. If they were staying in the RV, again, there would have been some indication. In this case, there was no condensation on the RV, no lights, no movement of the RV from people moving around, and no hook-ups. Nor were there any lights on inside the front of the main building.

He also did a court search for documents related to the property—tax liens, judgment liens, and criminal. In so doing, he found a \$70,000 lien. M.C. was the debtor, and the primary address provided to the court was the Brick address. He also found other open liens. The Howell property was listed as a business in the tax records with no “livable” area identified. According to Burdge, to be identified as a residential property, a separate entrance would be required, and other criteria must be met. He based this statement on his review of the applicable ordinances/zoning laws. He also looked up the vehicle registration for the various vehicles. The buses were registered to the business located in Howell. M.C.'s personal vehicle was registered to the property in Howell, but

he believed that she most recently changed the registration when the investigation first started.

On one of the occasions that he surveilled the property in Brick, around 5:30–6:00 a.m., he drove by the property in Howell first to establish that no one was there. He is cognizant of the fact that the Howell property is a full-time daycare. People generally started getting there around 7:30 a.m. He has never been inside the Howell property.

According to Burdge, one of his employees assisted in the investigation—Anthony Stables (Stables). Stables followed M.C. one of the days from Brick to Howell but had to break off following M.C. due to the excessive speed. He (Burdge) was present at the Howell property on the other end when M.C. arrived a short time later.

Based upon his investigation, he believes that M.C. and O.C. do not live in Howell for several reasons. First, there was the initial surveillance that he had conducted when he was first retained and determined that she did not live there. Second, when the matter went to a hearing the first time, M.C. represented that while she did not live at the Howell property at that time, going forward, she would be residing full-time at that location. Third, she fraudulently signed a document saying she resided in the District when she didn't. He is cognizant that people who have vacation homes sometimes stay for a long weekend, but in M.C.'s case, she represented that she lived in one place (Howell) when in fact she lived in another (Brick). Fourth, O.C. informed school personnel that she did not live in Howell. Last, it defies common sense that M.C. and her daughter would reside at the Howell property and not the house in Brick. On this last point, Burdge opined that it is clearly convenient for M.C. for the bus to pick up and drop off her child at the daycare. It is also convenient that M.C. does not have to run home at the end of the school day to pick up her child and return to her workplace to finish out her workday or hire someone to get O.C. off the bus. In other words—it saves her time and money.

When asked on cross examination whether he believed M.C. was lying as to where she lived, he stated “yes sir I do.” He acknowledged that he has never been in the Howell property. With regard to M.C.'s vehicles, he also acknowledged that the Mercedes and

Land Rover were registered to the Howell property, but he believes that as with her residency, M.C. lied about that as well.

In questioning Burdge about what he saw when he went to the Brick property, specifically how far away he was, he stated that her profile was distinct, the blinds were wide open, and he was at the curb, which was about 25' away. It was pre-dawn, and her silhouette was backlit from inside of the house. He took a picture of what he saw, which he put in his report. Burdge acquiesced that the picture was poor because it was in black and white; however, he reiterated that it was M.C. that he saw in the window.

Also questioned was his testimony that he lost M.C. when he was tailing her, yet he made it to the Howell property ahead of her. In response, Burdge stated that he took backroads and arrived just as M.C. turned into the driveway of the Howell property.

Burdge was also asked about his testimony that he spoke to nearby property owners when in fact there were no close neighbors. In response, he stated that there is a neighbor who lives directly across the street who informed him that no one resides overnight at the Howell property. When challenged on this, Burdge stated that like any conscientious homeowner, you are cognizant of what is happening in your neighborhood and by your residence.

He disagreed with the statement that the building in Howell was a residence. However, he has never been inside and does not know if there are residence quarters inside the building.

He does not know if there is a previous judgment against M.C. as it relates to residency. What he was told, however, was that after the first hearing, she had lied on the record about where she lived. With regard to the liens that he had testified earlier about, the address that they were attributed to was M.C.'s property located in Brick—one of them was for a loan in the amount of \$70,000. By his reasoning, if there is court documentation, the debtor's address is the one listed on the court documents—particularly for court mailings. He would not commit to the statement that the court document does not reflect "domicile."

Upon questioning by the tribunal about the investigative timeline, Burdge stated that his company was first retained in March 2023–April 2023. During that time period, M.C. was followed once during the week from Brick to Howell in the early morning. During the weeks that the case was open, multiple drive-bys took place during the evening hours, during which no activity was observed—there were no lights on that could be seen through the windows, no shadows, and no cars in the driveway other than the silver car by the dumpsters that never moved, the buses, and the RV. He spoke to M.C.’s neighbor and also spoke to the code official, who informed that M.C. did not apply for a permit to live there. Additionally, video clips were taken.

His company was re-engaged on December 1, 2023, to March 28, 2024. During this time period, he put up a pole camera from March 10, 2024, to March 17, 2024, which ran for a week, twenty-four hours a day. The trailer was observed, and the RV was observed a couple of times. Additionally, M.C. was also followed on two occasions—once on December 1, 2023, and again on March 28, 2024. There were also drive-bys that consistently revealed no activity at the site after hours, and photos were taken of the vehicles located at the Brick property. Burdge also noted that it takes approximately thirty-four minutes to get from point to point.

FINDING OF UNDISPUTED FACTS

M.C. owns a property located at xxx West Farms Road, Howell, New Jersey (Howell Property) where she owns/operates a business—Home Sweet Home Daycare and Preschool. There is a mortgage on the property that is in the LLC’s name.

M.C. also owns a residence located at xx Meadow Point Drive, Brick, New Jersey, (Brick Property). There is a primary mortgage on the property in M.C.’s name.

O.C. was enrolled in and attended school in the Howell Township School District (District) for the 2022/2023 and 2023/2024 school years.

During the 2022/2023 academic year, the Board challenged petitioner's residency, claiming that petitioner did not reside in the District. The Board retained a private investigative firm—Wil-Bur Investigations, Inc.—to conduct surveillance on petitioner to verify petitioners' primary address.

Based upon the initial investigation, on May 8, 2023, the Board issued a Notice of Final Ineligibility determining that O.C. was not domiciled in the District during the 2022/2023 academic year and that her primary residence was the Brick Property. (J-2.)

M.C. challenged the Board's determination; however, prior to a hearing, the parties reached a settlement agreement (Agreement) wherein for the 2023/2024 academic year, O.C. "will" reside a majority of the school days at the Howell Property. The Agreement further stipulated that if at any time it was determined that petitioner was not domiciled in the District, M.C. would be responsible for tuition from the date that O.C. was originally enrolled. M.C. signed a certification acknowledging the terms of the settlement. (J-3 and J-4.)

Due to ongoing concerns about M.C. and O.C.'s domicile, the Board re-engaged the investigative firm of Wil-Bur Investigations to conduct further investigations from December 1, 2023, to March 28, 2024. At the conclusion of the investigation, Burdge filed a surveillance report and a supplementary report with the Board. (R-9 and R-10.)

Based upon these findings, the Board issued a second Preliminary Notice of Ineligibility and thereafter, a Notice of Final Ineligibility. M.C. appealed the Board's determination, and the Board cross claimed for back tuition based upon the Agreement. The daily tuition rate for the 2022/2023 school year was \$72.93. The daily tuition rate for the 2023/2024 school year was \$91.92. The total tuition sought by the District is \$29,837.85.

Three individuals testified in this matter—M.C. on her own behalf, and Burdge and Sanasac on behalf of the Board. When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness' credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and

it incorporates the overall assessment of the witness' story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); In re Polk, 90 N.J. 550 (1982). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

With the above in mind, and in review of the witness testimony, I note that M.C. is a full-time mom and full-time businesswoman who runs what appears to be a successful daycare/camp business. Clearly, she has her hands full. Yet, based upon the testimony and documentary evidence presented in this matter, I had difficulty giving credence to her testimony as to where she is domiciled for reasons set forth more fully below.

M.C. repeatedly testified that a domicile is where you rest your head at night, not the condition of your residence for purposes of residency. She is correct in that statement; however, representations and presentation of documentation such as a property tax record in the name of an LLC, a commercial driver's license to allow M.C. to drive her daycare's buses, or a social security card or an insurance card—the latter two typically not containing an address—do not individually or collectively prove domicile. It is an aggregate of factors or totality of all of the evidence that must be looked at objectively through the lens of common sense that goes into making such a determination.

With that in mind, and turning to M.C.'s testimony, M.C. testified that she sleeps at the Howell property a majority of the school year. She initially described the sleeping

quarters as a “studio” within the school, noting that there was a kitchen and a bathroom. However, on cross examination, she admitted that the “studio” was in fact the faculty breakroom that is used by the staff when the daycare is open, which can be as late as 7:00 p.m. Staff typically remain on property until all of the students have left for the day, which according to M.C., could be as late as 7:00 p.m.

When questioned where she sleeps in the breakroom, M.C. stated that she sleeps on a pull-out couch every night. Her seven-year-old daughter sleeps in the same room on a toddler bed, which is the size of a crib mattress and is what the daycare utilizes for its students/campers. While there is a kitchen, it is the school kitchen, and the bathroom in question is the facility bathroom(s). There is no shower or bath at the facility. According to M.C., there is a closet in the breakroom where she sleeps and a single drawer where they keep their clothes; however, she does store some personal items in the RV, which is there periodically. Staff start arriving at 5:30 in the morning, and presumably, students arrive shortly thereafter.

The Brick property, on the other hand, is located a little over thirty minutes away. It is a single-family residence. It has four bedrooms and two and a half baths and is located in what sounds like a nice residential neighborhood. (R-7.) Both M.C. and O.C. have their own bedrooms and beds at the property. According to M.C., she stays at the Brick property on the weekends and holidays. Her boyfriend stays there during the week, and family stays there when they visit.

M.C. also spoke about where she and her daughter bathe. On cross examination, not direct, M.C. testified that when she and her daughter want to shower, they will go outside to the RV and use that shower. Notably, M.C. testified that the RV is self sufficient, hence the investigator would not have seen any hook ups. As with the sleeping arrangement noted above, on several levels, this just doesn't add up. If M.C. were to be believed, she and her daughter would go outside in the middle of winter to the RV and start the generator so that there were lights and presumably hot water, so that they could shower. Additionally, the water would at some point have to be replenished, which in turn requires a water hook-up. If the bathroom is used, the septic tank on the RV would have to be pumped. As noted by the investigator, at no time were hook-ups, lights, or

movement observed in the RV. Additionally, the RV was not there all of the time. In fact, according to M.C., the RV has been there for approximately a year—therefore, where did they shower/bathe prior to that?

When questioned further on the bathing issue, M.C. also stated that at times, she would drive to the Brick property, have O.C. take a bath there, and return to the Howell property. This comment alone was inconsistent with her earlier testimony about how absurd it would be for her and her daughter to commute from Howell to Brick to turn around and go back to Howell at the end of the day.

M.C.'s testimony surrounding her vehicles also did not add up. Over the period of the investigation, she owned/operated a couple of different vehicles, the most recent ones being a Mercedes and a Land Rover. While M.C. testified that the vehicles are "principally garaged" at the Howell property, none of the vehicles were observed at the Howell property at night during the course of the investigation. During the day, her Land Rover was observed at the Howell property, but this was not seen after the business closed. On the three times that a visual observation took place at the Brick property, M.C.'s vehicles were located in the driveway.

When questioned on this point, M.C. stated that a multitude of people use her cars—her boyfriend, her staff, and even her family—therefore, no one should read into the fact that her vehicles were not observed at the Howell property at night throughout the many months of surveillance. While this could be true, it again just doesn't make sense in the first place, and in the second place, it doesn't make sense that M.C. would allow other people to use her vehicles, leaving her and her seven-year-old daughter with only a school bus in case of an emergency or to go to the food store or just out.

Putting it another way, it stretches credulity that everyone, from staff members to boyfriend and family, but M.C. uses both her Brick residence and her personal vehicles during the weeknights; that she and her child either use the RV that has periodically been on the property over the past year or they go back and forth to the Brick property to bathe; and that she sleeps on a pull-out couch and her seven-year-old child sleeps on a toddler bed in the breakroom of her business during the school year.

I also heard testimony from Burdge. For having been in the law enforcement field for as many years as he proclaimed, I found his investigative report to be lacking in detail and his testimony wrought with unsubstantiated hearsay, subjective opinions, and jumbled. Despite this, I do believe that he conducted the surveillance that he proclaimed to have done and made the observations that he stated were done, and I give weight to his testimony as it relates to records reviewed and documented surveillance findings. The surveillance information was supplemented with a copy of his first investigative report and surveillance logs after I requested the same. On this point, while counsel for M.C. has objected to the introduction and consideration of the supplemental documentation, Burdge testified to the information contained therein and counsel had ample opportunity to cross examine him on his testimony on direct and my colloquy with Burdge.

Similarly, I found Sanasac credible in his testimony and give weight to his testimony of personal observations.

With the above in mind, in addition to the finding of undisputed facts above, I **FIND** the following **FACTS**:

M.C. holds a commercial driver's license, which allows her to drive her company's school buses. The Howell property is the address listed on the license. This alone is not indicative of domicile.

All of M.C.'s personal vehicles are registered to the Howell property address. Again, this alone is not indicative of domicile.

The Howell property is held in the name of Camp Royal Estates, LLC. M.C.'s testimony, and the documentation presented in this matter, reflect that M.C. is the sole owner of the LLC. As a property owner in Howell Township, the LLC is required to pay property taxes. The fact that M.C., through her LLC, pays taxes in the District does not in and of itself prove domicile.

While M.C. testified that she really does not receive mail at the Brick property and even her bills for the Brick property are sent to the Howell property, no such evidence was presented at the hearing. During her testimony, she belatedly admitted that she did receive the residency notice from the school at the Brick property.

The Howell property is zoned as 4A, which is a commercial zone. (R-9.) According to the tax records, the “Livable Area” of the Howell Property is listed as “0.” No one from the District or Burdge has ever been inside of the property; therefore, they are unfamiliar with its layout.

As part of Burdge’s investigation, a motion camera was installed across the street from the Howell property for several days from March 10, 2024, to March 17, 2024. Footage revealed that except for the buses and the silver car by the dumpsters, all vehicles left the parking lot between 7:30–8:00 p.m. M.C.’s personal vehicles were not observed on the property at night during this time period.

Over the course of the second investigation, which took place from December 2023 to March 2024, multiple observations were made of the Howell property both in the early morning and after business hours in the evening. M.C.’s personal vehicle(s) were not observed at the property when the school was closed for business, and there was no sign of activity at the times of observation.

In addition to the pole camera and surveillance observations, M.C. was physically followed three times over the course of the entire investigation. On all three occasions, which occurred during the weekday in the early morning, M.C. and O.C. were followed leaving the Brick property and heading to the Howell property.

I **FIND** that the Board had sufficient cause to question M.C. and O.C.’s domicile for the academic years of 2022/2023 and 2023/2024.

I further **FIND** that based upon the totality of the evidence presented, both documentary and testimonial, and in weighing the credibility of the witnesses that testified,

that M.C. and O.C. were not domiciled at the Howell property for the 2022/2023 and 2023/2024 academic years.

LEGAL ARGUMENT

Public schools are required to provide a free education to individuals between the ages of five and twenty years who are domiciled within the school district. N.J.S.A. 18A:38-1(a). Domicile has been 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. [citation omitted] A person may have several residences or places of abode, but only one domicile at a time.” D.L. v. Bd. of Educ. of Princeton Reg’l Sch. Dist. 366 N.J. Super. 269, 274 (App. Div. 2004). The domicile of an unemancipated child is that of her parent, custodian or guardian. P.B.K. ex rel. minor child E.Y. v. Bd. of Educ. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001).

N.J.A.C. 6A:22-3.4 sets forth eligibility documentation that the board of education may accept and states in relevant part:

- (a) A district board of education shall accept a combination of any of the following or similar forms of documentation from persons attempting to demonstrate a student’s eligibility for enrollment in the school district:
 - 1. Property tax bills; deeds; contracts of sale; leases; mortgages; signed letters from landlords; and other evidence of property ownership, tenancy, or residency;
 - 2. Voter registrations; licenses; permits; financial account information; utility bills; delivery receipts; and other evidence of personal attachment to a particular location;
 - 3. Court orders; State agency agreements; and other evidence of court or agency placements or directives;
 - 4. Receipts; bills; cancelled checks; insurance claims or payments; and other evidence of

expenditures demonstrating personal attachment to a particular location or to support the student;

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

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

7. Documents pertaining to military status and assignment; and

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

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

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

(d) A district board of education shall not condition enrollment on the receipt of information or documents protected from disclosure by law, or pertaining to criteria that are not a legitimate basis for determining eligibility to attend school. They include, but are not limited to:

1. Income tax returns;

2. Documentation or information relating to citizenship or immigration/visa status, except as set forth at N.J.A.C. 6A:22-3.3(b);

3. Documentation or information relating to compliance with local housing ordinances or conditions of tenancy; and

4. Social Security numbers.

(e) The district board of education may consider, in a manner consistent with Federal law, documents or information referenced at (d) above, or pertinent parts thereof if voluntarily disclosed by the applicant. However, the district board of education may not, directly or indirectly, require or request such disclosure as an actual or implied condition of enrollment.

[Emphasis added.]

Nothing precludes the school district from reevaluating a residency determination of a student should a question arise as to a student's domicile. See N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.3. Where a local board determines that a child is not properly domiciled in its district, N.J.S.A. 18A:38-1(b)(2) provides a right of appeal to the parents as follows:

The parent or guardian may contest the board's decision before the commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the commissioner and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this subsection.

With the above in mind and turning to the instant matter, based upon an initial investigation and subsequent follow-up investigation, the respondent reevaluated M.C. and O.C.'s residency status and determined that they were not domiciled in the Howell School District. The burden is on the petitioner as the parent to prove by a preponderance of the competent and credible evidence that she and her child meet the school district's residency requirements.

Citing to Somerville Board of Education v. Manville Board of Education, 332 N.J. Super. 6 (App. Div. 2000), and Board of Education of Township of Middle v. K.K. and P.K., 1992 N.J. AGEN LEXIS 5259, petitioner proclaims that while a person may have multiple residences and/or own multiple properties, they can have only one domicile. It is petitioner's position that the facts are undisputed that she owns multiple properties and that the evidence presented unequivocally showed that she stayed in Howell during the weeknights and left on the weekends/holidays during the time period in question.

Petitioner further argues that respondent improperly relied upon zoning regulations in rendering their residency determination contrary to the holding in K.K.

Respondent likewise acknowledges that a person can have multiple residences but only one domicile. Contrary to petitioner's assertion however, respondent contends that petitioner's domicile is in Brick. This was based upon the two investigations that were done after O.C. disclosed that she lived at the Brick residence. Respondent also calls into question M.C.'s credibility—pointing to multiple statements that were made during her testimony that were inconsistent and/or lacked credulity on several levels. Citing to Board of Education of Fort Lee v. Kintos, 96 N.J.A.R.2d (EDU) 1, respondent points out factual similarities between Kintos and the instant matter, asserting that petitioner in this case is using her business address purely out of convenience to enroll her daughter in Howell and for tax purposes and that her primary residence is in Brick, for which she holds a primary residential mortgage.⁵

I concur with the respondent.

As noted above, pursuant to N.J.S.A. 18A:38-1, free public education shall be provided to any person over five and under twenty years of age who is domiciled within the school district. In general, domicile is the place of a person's abode where he or she has the present intent of remaining and to which, if absent, he or she intends to return.

⁵ In Kintos, the Board of Education of the Borough of Fort Lee petitioned the Commissioner of Education, claiming that the respondent's children were not domiciled in the Fort Lee school district from 1984 through 1991. After a five-day hearing, the administrative law judge (ALJ) determined that the children did not "reside" in Fort Lee during the time period in question. Upon consideration of the Initial Decision, the Commissioner remanded the matter back to the ALJ for a further hearing on a couple of issues—one of which was the issue of "domicile" rather than "residence." On remand, after hearing competing proofs by the parties on the issue of domicile, the ALJ determined that the family's domicile was not in Fort Lee. Notably, the family owned a property in Fort Lee, which was a two-family unit with an attached dry-cleaning business that was family-run. As part of their proofs, respondent presented, among other things, proof of voter registration, vehicle registration, and pet licensure in Fort Lee.

On remand, based upon the evidence presented by the Board of Education (telephone records, tax returns, investigative report) and a credibility analysis of the witnesses, the ALJ affirmed their prior determination that respondent was not domiciled in Fort Lee. The Commissioner concurred with the ALJ's determination on remand and ordered that the respondent pay the designated tuition amounts for the time period in question. On appeal, the Court upheld the Commissioner's determination on the issue of domicile but determined that the Board could only recover tuition for certain years (1984–1986 and 1990–1991). Ibid.

Mercadante v. City of Paterson, 111 N.J. Super. 35, 39 (Ch. Div. 1970), aff'd, 58 N.J. 112 (1971).

The terms “residence” and “domicile” are not synonymous—a person may have several residences or places of abode, but only one domicile at a time. See Collins v. Yancey, 55 N.J. Super. 514, 520–21; State v. Benny, 20 N.J. 238, 251 (1955); In re Jaffe, 74 N.J. 86, 90–91 (1977); Lea v. Lea, 18 N.J. 1 (1955).

In In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), it was stated:

In a strict legal sense, the domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning, and from which he has no present intention of moving.

[Citing Kurilla v. Roth, 132 N.J.L. 213, 215 (Sup. Ct. 1944).]

Thus, a domicile is what one regards as a true and permanent home. In re Jaffe, 74 N.J. at 90–91. In the Mercadante case, the court stated that the following factors are important in determining the domicile of a person:

[T]he 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 there is or is not an intention, when absent, to return.

[111 N.J. Super. at 39–40.]

“A choice of domicile by a person, irrespective of his motive, will be honored by the court, provided there are sufficient objective indicia, by way of proofs, supporting the actual existence of that domicile.” Unanue, 255 N.J. Super. at 376. In general, the courts have recognized that intent is a decisive factor in establishing domicile, State v. Benny, 20 N.J. 238; Unanue, 225 N.J. Super. 362; Collins v. Yancey, 55 N.J. Super. 514 (Law Div. 1959); see also D.L. v. Bd. of Educ. of Princeton, 366 N.J. Super. 269 (App. Div. 2004).

Given the totality of the evidence presented in this case, I did not find that the petitioner met her burden of proof in establishing domicile in Howell Township. While I did not find Burdge's investigative report to be of the caliber one would expect of a former law enforcement officer and private investigator, I still found his report, his testimony regarding the documentation he reviewed, and his surveillance observations to be credible and gave weight to the same. Similarly, with Sanasac, I have no doubt that he too made the observations that he did.

There is no question that M.C. submitted documentation that reflects residency, but such documentation is not always indicative of domicile. It is also undisputed that M.C.'s vehicles are registered to the Howell property and her driver's license—a commercial license that allows her to operate the daycare's buses and transport children—also reflect the same address. It is also undisputed that M.C., through her LLC, pays taxes in the District. Again, such documentation is typically sufficient to prove domicile, but when domicile comes into question, which it did in this case, it is within the District's province to seek additional proofs, which the District did through two separate investigations, and as a result of which, the District sought to disenroll O.C. It is M.C.'s burden to show by a preponderance of the credible evidence that she was truly domiciled in Howell Township. I **FIND** and **CONCLUDE** that she has failed to do so. As set forth in greater detail above, I had difficulty giving weight to M.C.'s testimony when viewed as a whole. As succinctly stated in Carbo, "credibility involves more than demeanor. It apprehends the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo, 314 F.2d at 749. In M.C.'s case, I found that her testimony was inconsistent, self serving at points, stretched credulity, and at the end of the day, it just did not hang together with the other evidence presented in this matter.

Tuition

N.J.S.A. 18A:38-1(b)(2) states in pertinent part:

If the superintendent or administrative principal of a school district finds that the parent or guardian of a child who is

attending the schools of the district is not domiciled within the district and the child is not kept in the home of another person domiciled within the school district and supported by him gratis as if the child was the person's own child as provided for in paragraph (1) of this subsection, the superintendent or administrative principal may apply to the board of education for the removal of the child. The parent or guardian shall be 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 or the child is not kept in the home of another person domiciled within the school district and supported by him gratis as if the child was the person's own child as provided for in paragraph (1) of this subsection, the board may order the transfer or removal of the child from school. The parent or guardian may contest the board's decision before the commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the commissioner and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this subsection. The board of education shall, at the time of its decision, notify the parent or guardian in writing of his right to contest the decision within 21 days. No child shall be removed from school during the 21-day period in which the parent may contest the board's decision or during the pendency of the proceedings before the commissioner. If in the judgment of the commissioner the evidence does not support the claim of the parent or guardian, the commissioner shall assess the parent or guardian tuition for the student prorated to the time of the student's ineligible attendance in the schools of the district. Tuition shall be 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 and shall be collected in the manner in which orders of the commissioner are enforced. Nothing shall preclude a board from collecting tuition from the parent or guardian for a student's period of ineligible attendance in the schools of the district where the issue is not appealed to the commissioner;

In its answer to the petition, respondent filed a counterclaim demanding tuition repayment for the 2022/2023 school year and the 2023/2024 school year in the aggregate amount of \$29,837.85.⁶ This figure was based upon the September 2023 Settlement Agreement entered into by the parties and petitioner's certification as a result of the first

⁶ The per diem rate was \$72.93 for the 2022/2023 academic year and \$91.92 for the 2023/2024 academic year. The per diem rate for the 2024/2025 academic year is unknown at this time.

Final Notice of Ineligibility that was issued in May 2023.⁷ The figure does not include O.C.'s time in attendance year to date for the current 2024/2025 academic year.

For the reasons set forth more fully above, I found that M.C. and O.C. were not domiciled within the Township of Howell School District for the academic years of 2022/2023 and 2023/2024 and the current year of 2024/2025—therefore, O.C. does not meet the requirements set forth in N.J.S.A. 18A:38-1(a). I, therefore, **CONCLUDE** that O.C. was not entitled to a free public education in the Township of Howell School District for the time period in question and that M.C. is responsible for the aggregate tuition amount of \$29,837.85 for the academic years 2022/2023 and 2023/2024 and is also responsible for the per diem tuition for the current academic year of 2024/2025 until date of disenrollment.

ORDER

It is hereby **ORDERED** that petitioner's appeal is **DISMISSED**. It is further **ORDERED** that the Board's cross claim for tuition reimbursement is **GRANTED** in the amount of \$29,837.85 for the academic years of 2022/2023 and 2023/2024 in accordance with the terms of the Settlement Agreement. It is further **ORDERED** that M.C. is also responsible for the per diem amount for the current academic year of 2024/2025 until date of disenrollment.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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.

⁷ Petitioner appealed the Final Notice of Ineligibility, and the matter was transmitted to the OAL under Agency Dkt. No. 145-5/23.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

January 30, 2025

DATE

A handwritten signature in cursive script, reading "Tama B Hughes", written in black ink on a white background.

TAMA B. HUGHES, ALJ

Date Received at Agency:

Date Mailed to Parties:

TBH/dc

APPENDIX

Witnesses

For petitioner:

M.C.

For respondent:

Ronald Sanasac

George Burdge, III

Exhibits

Joint:

J-2 Notice of Final Ineligibility—2023

J-3 Email Settlement Terms

J-4 Certification of M.C.—2023

For petitioner:

P-2 Preliminary Notice of Ineligibility & Removal, June 3, 2024

P-3 Certification of Ronald Sanasac

P-5 Notice of Motion for Emergent Relief

P-6 Email and Settlement Agreement/Certification

P-7 Certification of George A. Burdge

P-8 Withdrawal of Petition of Appeal

P-9 Letter from Howell Township Public Schools to M.C., April 18, 2023

P-10* Photocopies of M.C.'s driver's licenses

For respondent:

R-6 BA 18 23 SP Resolution Granting Minor Site plan Approval-Use Variance-
2022-15

R-9 Investigation Report

R-10 Supplemental Investigation Report

R-11** Supplemental Certification of George A. Burdge and Surveillance Log

R-12** Supplemental Certification of George A. Burdge and December 1, 2023,
Investigative Report

*Copies requested by the tribunal

**Entered into evidence over petitioner's objection