

140-25
OAL Dkt. No. 04737-23
Agency Dkt. No. 42-2/23

New Jersey Commissioner of Education
Final Decision

Board of Education of the Borough of Bound
Brook, Somerset County,

Petitioner,

v.

Board of Education of the Borough of
Somerville, Somerset County, and K.B., on
behalf of minor children, K.B. and Z.B.,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondents Somerville Board of Education (Somerville) and the Somerset County Executive County Superintendent (ECS) pursuant to *N.J.A.C. 1:1-18.4*, and the replies thereto filed by petitioner Bound Brook Board of Education (Bound Brook), have been reviewed and considered.

Bound Brook challenges a homelessness and school district fiscal responsibility determination regarding Z.B. and K.B., the children of respondent, K.B.,¹ rendered by the ECS on December 2, 2022. It is undisputed that, prior to June 2020, Ms. B. resided in Somerville with her children, who attended school in the Somerville School District. Thereafter, the family lost their

¹ Because respondent, K.B., and one of her children share the same initials, respondent, K.B. will be referred to herein as “Ms. B.,” and her child will be referred to herein as “K.B.”

housing due to domestic violence and began living with relatives. On September 28, 2020, Ms. B. signed a lease for a two-bedroom, one bathroom apartment in Bound Brook, within the Bound Brook School District. The lease period was from October 1, 2020, to September 30, 2021, and only Ms. B., Z.B., and K.B. were listed as the occupants. The apartment had a kitchen, a basement, running water, heat, and electricity. The family occupied the apartment for the full duration of the lease and Ms. B. signed a second rental agreement to remain at the Bound Brook apartment from October 1, 2021, to September 30, 2022, and a third renewal in October 2022. On June 1, 2024, Ms. B. moved into an apartment in Branchburg after signing a written lease agreement. The children continued to attend school in Somerville throughout this entire period.

Somerville assumed financial responsibility for the children's tuition and transportation through October 29, 2021. After that, Somerville sought a determination from the ECS regarding homelessness and school district fiscal responsibility for Z.B. and K.B. On December 2, 2022, upon consideration of information then available about the family, the ECS determined that: (1) the family lost their Somerville housing in 2020, and continued to be McKinny-Vento eligible; (2) the family moved in with relatives in Bound Brook in June 2020, and became domiciled in Bound Brook as of October 29, 2021, when Bound Brook became the district of residence; and (3) thus, Bound Brook is responsible for the children's tuition and transportation costs from October 29, 2021, to present, including the costs of attendance to Somerville, until the family establishes a permanent residence.

Bound Book appealed the ECS's determination to the Commissioner of Education. After the matter was transmitted to the OAL, a hearing was held on July 8, 2024, wherein Ms. B. testified. She stated that she has identified as homeless since 2019. On October 1, 2020, she

moved to the Bound Brook apartment with her children after executing a lease. She testified to entering into two successive lease agreements for her and her children to occupy the Bound Brook apartment after the first lease expired. Ms. B. stated that she intended to leave for Branchburg while residing at the Bound Brook apartment but did not want to break her lease. Ms. B. further testified that she relied on a rental assistance program operated by Norwescap to pay her security deposit and rent until 2021. When that support ended, she utilized the Department of Community Affairs' (DCA) Homelessness Prevention Program, which paid her rent until December 2023 or January 2024. On June 1, 2024, Ms. B. and her children moved into an apartment in Branchburg after executing a lease. As of the hearing on July 8, 2024, the family still resided in the Branchburg apartment, and the children continued to attend school in Somerville.

The parties submitted post-hearing briefs. Bound Brook contended that the family had a fixed, regular, and adequate residence at the Bound Brook apartment from October 1, 2020, through June 1, 2024, and therefore was not homeless as defined by law at any time relevant to this matter. Bound Brook further contended that when Ms. B. moved to the apartment, the children should have enrolled in Bound Brook schools; as such, Bound Brook cannot be financially responsible for the children's education in Somerville. Somerville and the ECS contended that the Bound Brook apartment is transitional housing and therefore the family was homeless pursuant to *N.J.A.C. 6A:17-2.2(a)(1)*. Somerville and the ECS further asserted that Bound Brook remains financially responsible for the children's education in Somerville from October 21, 2021.

The Administrative Law Judge (ALJ) found Ms. B.'s testimony to be "somewhat credible and persuasive" but further indicated that she "attempted to 'sell' her version of the facts to the

undersigned, including the belief of homelessness,” which “detracted from any modicum of credibility.” Initial Decision at 4. The ALJ further found that a “logical assembly of piecemeal facts, as testified to by K.B.,” established that she was domiciled in Bound Brook, but sent her children to school in Somerville. *Ibid.*

The ALJ concluded that “[a]t no time during the parameters established during this hearing was K.B. or her children homeless.” Initial Decision at 5. Citing to testimony and evidence on the record, the ALJ reasoned that there was no basis to conclude that the Bound Brook apartment was inadequate for the family’s needs. Specifically, the ALJ found that the apartment had two bedrooms, a bathroom, a living room, and a basement. The apartment was also solely occupied by Ms. B., Z.B. and K.B., who had full access to “all amenities of a stable and adequate home” such as heat, water, electricity, and access to cooking facilities. *Id.* at 4-5. Accordingly, the ALJ deemed the Bound Brook apartment fixed, regular, and adequate.

Next, the ALJ concluded that since domicile attaches immediately when a residence is deemed fixed, regular, and adequate, the children had become eligible for free public education in Bound Brook and should have enrolled in Bound Brook schools; as such, Bound Brook is not responsible to Somerville for the children’s education and transportation. In doing so, the ALJ reversed the ECS’s determination, and rejected respondents’ argument that Ms. B. was homeless because DCA and Norwescap paid her rent.

In its exceptions, Somerville argues that the ALJ erred in concluding that Ms. B. and her children were not homeless. Somerville contends that it is well-established that families living in transitional housing are considered homeless under law and that homelessness is best viewed in a continuum. According to Somerville, that continuum shows that Ms. B. and her children

temporarily resided in Bound Brook since October 2020, out of necessity due to domestic violence; that Ms. B. was totally reliant on transitional housing programs to pay her rent from October 2020 to June 2024; and that Ms. B. never intended to make Bound Brook her permanent domicile. As such, Somerville argues that the Bound Brook apartment was transitional housing, meaning the family was homeless in Bound Brook from October 2020 through June 2024. Accordingly, Somerville contends that Bound Brook is responsible for the tuition and transportation of the children to attend school in Somerville.

In response, Bound Brook argues that the ALJ correctly found and concluded that Ms. B. and her children were not homeless while residing at the Bound Brook apartment. Bound Brook contends that the family did not reside in transitional housing or a transitional housing facility as defined by law at any point relevant to the instant matter. Bound Brook further contends that the record does not support a conclusion that Ms. B. intended to reside in Bound Brook temporarily, noting that Ms. B. entered into three written annual lease agreements for the Bound Brook apartment, and that the family lived there continuously for nearly four years. Furthermore, Bound Brook argues that the undisputed facts establish that the family had a fixed, regular, and adequate home in Bound Brook from October 1, 2020 through June 1, 2024, and that rental assistance from a third party does not alter the apartment's fixed and regular nature.

The ECS takes exception to the ALJ's conclusion that at no time were Ms. B. and her children homeless. The ECS argues that the ALJ's finding — that Ms. B. and her children moved in with relatives in Bound Brook in June 2020 — qualifies the family as homeless under state and federal law. The ECS also argues that there is an open question about whether the family relied on transitional housing that the ALJ never resolved, and that failing to address this issue was in

error.² As such, the ECS requests that the ALJ's decision be rejected and the matter remanded for further fact-finding.

In response, Bound Brook argues that the ALJ correctly rejected the claim that the Bound Brook apartment was transitional housing. Bound Brook asserts that respondents failed to produce competent evidence establishing that Ms. B.'s successive annual leases were through a transitional housing program that would qualify as homelessness. Moreover, Bound Brook emphasizes that the ALJ addressed the issue of transitional housing when, based on his credibility finding and the evidence on the record, he concluded that the family was not homeless during the relevant period. Lastly, Bound Brook contends that instant matter concerns Ms. B.'s residence from October 1, 2020, onward; as such, her homelessness status prior to that period is not at issue.

Upon review, the Commissioner concurs with the ALJ – for the reasons stated in the Initial Decision – that Ms. B. and her children were not homeless during the time period at issue in this case.³ The Commissioner further concurs with the ALJ's determination that Bound Brook is not financially responsible for Z.B.'s and K.B.'s education or transportation to Somerville.

² The ECS notes that neither Ms. B. nor Somerville provided evidence that the housing assistance provided by Norwescap or DCA qualified as transitional housing “rather than a more general homeless prevention program,” and that Bound Brook did not provide evidence that the residence did not qualify as transitional housing. The ECS indicates that he “left it to the ALJ to decide” whether the family lived in transitional housing. ECS Exceptions, at 6. Notwithstanding those statements, the ECS also argues that the Bound Brook apartment was transitional housing, pointing in part to Exhibit R-5. However, Exhibit R-5 was not entered into evidence because it was not produced until after the hearing. As such, any reference to it is improper per *N.J.A.C. 1:1-18.4(c)*, and neither the exhibit itself nor arguments related to it in the ECS' exceptions were considered.

³ The Commissioner finds that Ms. B. may have been homeless from June 2020 through September 2020, when she lost her home due to domestic violence and was residing with relatives. The Commissioner notes that students living with relatives are not always determined to be homeless, and a fact-specific analysis is required. However, because the ECS's decision being appealed only found Bound Brook

Under the McKinney-Vento Homeless Assistance Act, homeless children are defined as “individuals who lack a fixed, regular and adequate nighttime residence,” which includes “children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason.” 42 U.S.C.A. § 11434a(2). Similarly, under state law, homeless children are defined as “child[ren] or youth who lack[] a fixed, regular and adequate residence pursuant to *N.J.S.A. 18A:7B-12* and *N.J.A.C. 6A:17-2.2*,” which includes children living in the “residence of relatives or friends where the homeless child resides out of necessity because the child’s or youth’s family lacks a regular or permanent residence of its own.” *N.J.A.C. 6A:17-1.2*; *N.J.A.C. 6A:17-2.2(a)(3)*. “[D]omicile attaches immediately if a student’s dwelling is found to be fixed, regular and adequate.” *Bd. of Educ. of Twp. of Egg Harbor v. Bd. of Educ. of Mainland Reg’l Sch. Dist.*, Commissioner Decision No. 555-10 (Dec. 30, 2010), at 4 (citing *N.J.S.A. 18A:17B-12(c)*).

responsible for K.B. and Z.B. beginning on October 29, 2021, the period prior to that date is not at issue in this case and it is unnecessary to make that determination here. For this reason, the Commissioner concludes that the ALJ was not in error when he found that the family was never homeless, as his decision was clearly limited to the period of time that is in dispute, not the period that covered June 2020 through September 2020. The Commissioner also notes that Ms. B.’s living situation from January 2024 to June 2024 is unclear, as she testified that she was sleeping in her car at one point in 2024, but the ALJ also noted that she testified that she “considers the end of her homelessness to have been in January 2024.” Initial Decision, at 3. However, as noted herein, Ms. B. was domiciled in Bound Brook well before January 2024 and should have already enrolled Z.B. and K.B. in the Bound Brook School District prior to any point at which she may have been living in her car in 2024. See *Bd. of Educ. of Borough of Bound Brook v. Bd. of Educ. of Twp. of Piscataway*, Commissioner Decision No. 363-24 (Oct. 8, 2024), at 10 (finding that because “domicile attaches immediately if a student’s dwelling is found to be fixed, regular and adequate,” the children should have enrolled in the new school district at the time the family moved into such a dwelling). Accordingly, even if Ms. B. became homeless during the period from January 2024 to June 2024, Bound Brook should not be held responsible to Somerville for the children’s tuition and transportation during that period, as the children should not have been attending school in Somerville at that time.

The Commissioner has previously held that homelessness “is best viewed in a continuum.” *St.-Op. Sch. Dist. of Camden v. C. Ann Volk*, Commissioner Decision No. 172-17R (June 20, 2017), at 11. Conducting a homelessness evaluation to determine whether a child’s home is considered fixed, regular, and adequate requires a fact-specific analysis and “cannot rest upon a simple calculation of the amount of time that children have spent in a particular location or municipality.” *M. O’K. v. Bd. of Educ. of Borough of Cresskill*, Commissioner Decision No. 325-14 at 3 (August 12, 2014), *aff’d*, No. A-0828-14T4 (App. Div. Sept. 8, 2016). In conducting such a fact-specific inquiry, the Commissioner must consider the totality of the circumstances, as “[t]he reasons for the children’s homelessness, their living conditions, and the resources and intentions of the parents or custodians are relevant.” *Ibid.*

Here, Ms. B. and her children were not homeless while residing in the Bound Brook apartment – a fixed, regular, and adequate residence. The Commissioner does not find Respondents’ exceptions to be persuasive. The fact that Ms. B. relied on DCA and Norwescap for her apartment’s security deposit and rent is not dispositive. Petitioner correctly points out that the Commissioner previously addressed a similar issue in *Bd. of Educ. of Borough of Bound Brook v. Bd. of Educ. of Twp. of Piscataway*, Commissioner Decision No. 363-24 (Oct. 8, 2024), at 8. The Commissioner concluded that a parent living in an apartment rental with child and her mother was not homeless. Specifically, the Commissioner noted that “the fact that [the parent] did not sign the lease for [the residence] and is not directly financially responsible for rent payments to the landlord does not require the Commissioner to conclude that [the parent and] children remain homeless.” *Ibid.* The Commissioner instead focused on the fact that the mother and child had resided at in the apartment for an extended period without interruption. *Ibid.*

Ms. B. and her children similarly resided at the Bound Brook apartment for an extended period. The family continued to reside at the Bound Brook apartment after their first annual lease expired. Ms. B. entered into two separate and consecutive annual lease agreements to remain at the Bound Brook apartment. The family resided there for over three years. The record indicates the family's residence at the Bound Brook apartment was continuous and without interruption. Furthermore, Ms. B., Z.B., and K.B. were the sole occupants of the apartment that consisted of two bedrooms, one bathroom, a living room, a kitchen, and a basement. The family had access to the entire apartment and its amenities, including running water, heat, and electricity. Ms. B.'s expressed desire to move elsewhere is insufficient to support a finding of homelessness when considered in light of the totality of the circumstances. *See ibid.* Moreover, Ms. B. testified that despite her intent to move, she did not want to break her lease.

The Commissioner is not persuaded by the respondents' exceptions. The ECS contends that the ALJ failed to address whether the Bound Brook apartment qualifies as transitional housing, and Somerville argues that the apartment was transitional housing. While the ALJ did not use the phrase "transitional housing" in the Initial Decision, he did specifically find that the "claim that the DCA paid [Ms. B.'s] rent does not qualify as proof of homelessness." Initial Decision, at 7. The parties' filings demonstrate that Ms. B.'s receipt of rental assistance was the basis for their argument that she resided in transitional housing; by rejecting the receipt of rental assistance as proof of homelessness, the ALJ inherently rejected it as proof that the Bound Brook apartment was transitional housing.

In reaching his determination, the ALJ relied on evidence on the record and Ms. B.'s testimony. The ALJ found Ms. B.'s testimony "somewhat credible" but that her attempts to sell

her version of the facts, including the belief of homelessness, “detracted from any modicum of credibility.” Initial Decision at 4. The Commissioner notes that the ALJ had the opportunity to assess the credibility of Ms. B., who appeared before him and make findings of fact based upon her testimony. Pursuant to *N.J.S.A. 52:14B-10(c)*, an agency “may not reject or modify any findings of fact as to issues of credibility of lay witnesses unless it is first determined from a review of the record that those findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.” The Commissioner finds no basis in the record to disturb the ALJ’s credibility assessment regarding Ms. B.’s testimony.

To fully clarify the issue, the Commissioner concludes that the Bound Brook apartment was not transitional housing. Pursuant to *N.J.A.C. 6A:17-1.2*, a transitional living facility means “a temporary facility that provides housing to a child due to domestic violence.” Here, while the record indicates that Ms. B. and her children relocated from Somerville to Bound Brook in June 2020 due to domestic violence, there is no evidence in the record that the Bound Brook apartment she began to lease in October 2020 fits into the definition of a temporary facility that provides housing; rather, it was a fixed, regular, and adequate residence in which Ms. B. and her children lived for more than three years. Somerville – and Ms. B. and the ECS – had ample opportunity during the proceedings at the OAL to produce documentation indicating that the Bound Brook apartment was part of a transitional housing program that could support a finding of homelessness under the law, but they did not do so, and the Commissioner concludes that it is unnecessary to remand this matter for further fact-finding when the record as it stands supports the conclusion that it was not transitional housing and Ms. B. was not homeless when she resided there.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby granted. Bound Brook is not financially responsible for the Z.B.'s and K.B.'s transportation to and education in Somerville from October 29, 2021 to June 30, 2024.⁴

IT IS SO ORDERED.⁵



COMMISSIONER OF EDUCATION

Date of Decision: April 21, 2025
Date of Mailing: April 22, 2025

⁴ If Ms. B. still resides in Branchburg, she is directed to enroll Z.B. and K.B. in the Branchburg School District if she has not already done so.

⁵ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 04737-23

AGENCY DKT. NO. 42-2/23

**BOARD OF EDUCATION, BOROUGH
OF BOUND BROOK, SOMERSET COUNTY,**

Petitioner,

v.

**BOARD OF EDUCATION, BOROUGH
OF SOMERVILLE, SOMERSET COUNTY,
AND K.B. ON BEHALF OF MINOR CHILDREN
K.B. AND Z.B.,**

Respondents.

Kyle J. Trent, Esq., for petitioner, Bound Brook Board of Education (Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys)

Philip E. Stern, Esq., for respondent Somerville Board of Education (DiFrancesco, Bateman, Kunzman, Davis, Lehrer and Flaum, P.C., attorneys)

K.B. on behalf of minor children K.B. and Z.B., respondent, pro se

Record Closed: October 21, 2024

Decided: December 5, 2024

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

Petitioner, Borough of Bound Brook, challenges the determination made by the Somerset County executive superintendent of schools that determined: 1. Respondent K.B. and her minor children K.B. and Z.B. under the law were homeless and became domiciled in Bound Brook as of October 29, 2021, when Bound Brook became the district of residence; and 2. Bound Brook is responsible for tuition and transportation costs for K.B. and Z.B. from October 29, 2021, forward, until the family establishes a permanent residence.

PROCEDURAL HISTORY

Petitioner filed an appeal with the Department of Education, and an answer was filed. The matter was transmitted to the Office of Administrative Law, where on May 31, 2023, it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Several prehearing telephone conferences were scheduled, but K.B. failed to appear.

Throughout the proceedings, the parties made several attempts to exchange discovery. The difficulties in exchanging discovery required multiple conference calls with the judge to resolve the conflicts. A telephone conference was held on June 4, 2024, where K.B. again failed to appear. I was informed that K.B. would not be attending the hearing. I made the determination that the hearing would proceed as scheduled on June 11, 2024. However, a telephone conference was held on June 11, 2024, without the appearance of K.B., and another hearing date was scheduled for July 8, 2024, where K.B. did appear. The record remained open for the parties to submit written closing summations. The record closed on October 21, 2024, after receipt of the parties' submissions.

FACTUAL DISCUSSION

K.B. is the parent of K.B. and Z.B. Until June 2020, K.B. resided in Somerville and the minor children attended school in the Somerville School District. In June 2020, K.B. moved to Bound Brook to live with relatives, where she continues to be domiciled with

her children. During this period, the children continued to attend school in Somerville. On December 2, 2022, the Somerset County executive superintendent of schools issued a decision regarding residency status and fiscal responsibility for the children. It was determined that the family became domiciled in Bound Brook as of October 29, 2021, and from that day forward Bound Brook was responsible for tuition and transportation for the children.

The preceding statements are not in dispute, as they are from the records and testimony of the parties, and are hereby **FOUND** as **FACT**.

Testimony

K.B. was the only person to testify, and she stated that as of June 1, 2024, she currently lives in Bound Brook, New Jersey, and has two children (ages fifteen and sixteen) enrolled in Somerville High School. On October 1, 2020, she moved to Bound Brook and executed a lease. (P-4.) The same lease was executed on October 1, 2021, through September 2022. “There’s a possibility” that the residential lease (P-4) was provided prior to the issuance of the McKinney-Vento eligibility. (P-1.)

On cross-examination, she stated that she has “identified as homeless since 2019” due to domestic violence. She contacted an organization that paid her rent and electricity until 2021. After that, the Department of Community Affairs (DCA) (Homelessness Prevention Program) paid for approximately two and a half years until January 2024. She considered herself homeless because she “couldn’t pay for rent” or provide for her family. These places were a “temporary residence.” She considers the end of her homelessness to have been in January 2024.

Additional Findings of Fact

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J.

Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story considering its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

After hearing the testimony and reviewing the evidence, I make the following additional findings of fact:

The testimony of K.B. was somewhat credible and persuasive. However, her own testimony assisted the petitioner in proving the facts of the case by a preponderance of the evidence.

A logical assembly of piecemeal facts, as testified to by K.B., was that she was domiciled in Bound Brook but sent her children to school in Somerville. The undersigned believes that the petitioner brought the case together quite well in establishing the real facts.

It was obvious that K.B. attempted to "sell" her version of the facts to the undersigned, including the "belief" of homelessness. This detracted from any modicum of credibility. The facts of the matter are that the Bound Brook apartment leased by K.B. consisted of two bedrooms and one bathroom and that she resided in it with her two children. There is no assertion or basis to conclude that it was inadequate for the family's needs. The two bedrooms, living room, kitchen, bathroom, and basement were solely occupied by K.B. and her two children. K.B. had full access to all amenities of a stable

and adequate home, including but not limited to heat, water, electricity, and cooking facilities. At no time during the parameters established during this hearing was K.B. or her children homeless.

Therefore, **I FIND** that until June 2020 K.B. resided in Somerville and the minor children attended school in the Somerville School District. **I FURTHER FIND** that in June 2020 K.B. moved to Bound Brook to live with relatives, where she continued to reside with her children; however, the children continued to attend school in Somerville. **I FURTHER FIND** that at no time were K.B. and her children homeless. **I FURTHER FIND** that on December 2, 2022, the Somerset County executive superintendent of schools issued a decision regarding residency status and fiscal responsibility for the children as follows: it was determined that the family became domiciled in Bound Brook as of October 29, 2021, and from that day forward Bound Brook was responsible for transportation for the children. However, **I FURTHER FIND** that although the December 2, 2022, finding by the Somerset County executive superintendent may be qualified as a “reasoned exercise of his discretionary authority under N.J.A.C. 6A:17-2.7(a),” it was erroneous.

CONCLUSIONS OF LAW

At issue is whether K.B. and her minor children K.B. and Z.B. under the law were homeless and became domiciled in Bound Brook as of October 29, 2021, when Bound Brook became the district of residence, and whether Bound Brook is responsible for tuition and transportation costs for minor children K.B. and Z.B. from October 29, 2021. Also at issue is whether the minor children, K.B. and Z.B., were entitled to a free education in Somerville to be paid for by Bound Brook under N.J.S.A. 18A:38-1, which provides that public schools shall be free to persons over five and under twenty years of age who are “domiciled within the school district.” See V.R. ex rel. A.R. v. Hamburg Bd. of Educ., 2 N.J.A.R. 283, 287 (1980), aff’d, State Bd., 1981 S.L.D. 1533, rev’d on other grounds sub nom. Rabinowitz v. N.J. State Bd. of Educ., 550 F. Supp. 481 (D.N.J. 1982) (New Jersey requires local domicile, as opposed to mere residence, for a student to receive a free education).

A person who meets age requirements and is domiciled within a school district may attend its public schools free of charge. N.J.S.A. 18A:38-1(a). A person may have many residences but only one domicile. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000), aff'd, 167 N.J. 55 (2001). A child's domicile is normally that of his or her parents. Ibid. 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. In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), aff'd, 311 N.J. Super. 589 (App. Div.), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051 (1999).

The acts, statements, and conduct of the individual, as viewed in the light of all the circumstances, determine a person's true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959). The parent has the burden of proof by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)(2). K.B. was not homeless at any time relevant to this proceeding, and the Bound Brook Board of Education is not financially responsible for K.B.'s children's education in Somerville at any time, including the period beginning October 29, 2021. The Bound Brook apartment leased by K.B. consisted of two bedrooms and one bathroom, and she resided in it with her two children. There is no assertion or basis to conclude that it was inadequate for the family's needs. The two bedrooms, living room, kitchen, bathroom, and basement were solely occupied by K.B. and her two children. K.B. had full access to all amenities of a stable and adequate home, including but not limited to heat, water, electricity, and access to cooking facilities.

Furthermore, Bound Brook is correct that when a family claims to be homeless but is living in "a fixed, regular, and adequate residence" they do not qualify as homeless. Bound Brook Bd. of Educ. v. Piscataway Bd. of Educ., 2024 N.J. AGEN LEXIS 880, Final Decision at *12 (October 9, 2024). Since "domicile attaches immediately if a student's dwelling is found to be fixed, regular and adequate," the family becomes "eligible for a free public education in the . . . school district [they moved to] pursuant to N.J.S.A. 18A:38-1(a) and N.J.A.C. 6A:22-3.1(a) and should have enrolled in [that district's] schools at that time." Ibid. (citation omitted). In such circumstance, that new district "cannot be held financially responsible for payment of the children's out-of-district tuition and transportation expenses" where the family claimed to be homeless and continued

attending school in their old school district pending the appeal. Ibid. The claim that the DCA paid K.B.'s rent does not qualify as proof of homelessness.

The record reflects that K.B. and her minor children were never homeless and that the children attended school within the district of Somerville while domiciled outside of the district in Bound Brook. Accordingly, **I CONCLUDE** that until June 2020 K.B. was domiciled in Somerville with the minor children, who attended school in the Somerville School District. **I FURTHER CONCLUDE** that in June 2020 K.B. moved to Bound Brook and was domiciled with relatives, and she continues to live there with her children. However, the children continued to attend school in Somerville. **I FURTHER CONCLUDE** that the decision of December 2, 2022, by the Somerset County executive superintendent of schools regarding residency status and fiscal responsibility for the children was erroneous. **I FURTHER CONCLUDE** that petitioner's appeal should be **GRANTED**.

ORDER

It is, therefore, **ORDERED** that the petitioner's appeal is **GRANTED** and Bound Brook is not financially responsible for any aspect of the minor children's education or transportation in Somerville.

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.

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.

December 5, 2024

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

Date Mailed to Parties:

DJB/onl

APPENDIX

Witnesses

For petitioner:

K.B.

For respondent:

None

Exhibits

For petitioner:

- P-1 McKinney-Vento Law
- P-2 Interrogatories
- P-3 Answers to Interrogatories
- P-4 Lease Agreement with 34 West Second St., Bound Brook

For respondent:

- R-1 Lease Agreements
- R-2 Norwescap and emails
- R-3 Ledger of payments
- R-4 May Invoice