

Y.Y., ON BEHALF OF MINOR CHILDREN,	:	
W.Y. AND D.Y.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE BOROUGH	:	DECISION
OF NORTH ARLINGTON, BERGEN COUNTY,	:	
	:	
RESPONDENT,	:	
	:	
AND	:	
	:	
BOARD OF EDUCATION OF THE	:	
VOCATIONAL SCHOOLS OF BERGEN	:	
COUNTY, BERGEN COUNTY,	:	
	:	
INTERVENOR.	:	

SYNOPSIS

Pro se petitioner appealed the determination of the respondent Board that her children, W.Y. and D.Y., are not entitled to a free public education in North Arlington schools. Petitioner contended, *inter alia*, that she has three separate residences in New Jersey, but is legally domiciled in North Arlington. The respondent Board of Education of North Arlington argued that Y.Y. is not legally domiciled within the school district, and filed a motion for summary decision, as well as a counterclaim for tuition. Petitioner filed opposition to the motion for summary decision, asserting that there are genuine issues in dispute which warrant an evidentiary hearing. The Board of Education of the Vocational Schools of Bergen County filed a motion to intervene, as one of petitioner’s children attends vocational school at the expense of the North Arlington school district.

The ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; written certifications submitted by the Board in support of its motion for summary decision – from the Board’s Superintendent of Schools, the Business Administrator for the district, and a former neighbor who lived near petitioner’s residence in Kearny, Hudson County – all attested to the apparent residency of petitioner and her sons in Kearny; and petitioner failed to submit anything to refute the factual assertions of the Board or the documentary evidence contained in the Board’s certifications. Accordingly, the ALJ concluded that petitioner is a resident of Kearny, not North Arlington, awarded summary decision to the Board, and ordered that petitioner reimburse the Board for tuition in the total amount of \$21,883.94 for the 2014-2015, 2015-2016, and 2016-2017 school years.

Upon review, the Commissioner found, *inter alia*, that: there are genuine issues of material fact herein; therefore, summary decision is not appropriate; petitioner submitted numerous documents to support her claim of residency in North Arlington, and filed an affidavit certifying that she “...has three residences in the state of New Jersey and is domiciled in North Arlington, New Jersey”; and the ALJ failed to consider the evidence in the light most favorable to petitioner, the non-moving party. Accordingly, the Commissioner rejected the Initial Decision and remanded the matter to the OAL for further proceedings.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

OAL DKT. NO. EDU 09260-16
AGENCY DKT. NO. 149-5/16

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by petitioner and the North Arlington Board of Education (Board) – pursuant to *N.J.A.C. 1:1-18.4* – and the petitioner’s reply thereto. The Board’s reply was untimely filed and was therefore not considered by the Commissioner. Petitioner’s reply to the Board’s reply was also not considered, as *N.J.A.C. 1:1-18.4* does not allow such a filing.

In her exceptions, petitioner argues that the ALJ erred in granting summary decision to the Board because there are genuine issues of material fact, which render summary decision inappropriate. Petitioner contends that the ALJ viewed the facts in the light most favorable to the Board, rather than the non-moving party, and made numerous credibility determinations. Petitioner contends that through a hearing, the ALJ would have been able to

hear testimony and make credibility determinations, but petitioner did not have the opportunity for a hearing. Additionally, petitioner points out that the ALJ failed to consider the documents she submitted, including tax bills, certificate of occupancy, voter registration, utility bills, W-2 statement, and bank statements. Petitioner maintains that while she has three residences, her domicile is in North Arlington; yet the ALJ failed to mention that she owns property in North Arlington, and avoided using the term “domicile” in his Initial Decision. The ALJ instead considered evidence of petitioner using her Kearny residence, but petitioner maintains that she has the right to use that property. Petitioner further emphasizes that the ALJ failed to consider case law involving the domicile of individuals who own multiple residences.

Petitioner also argues that the ALJ’s assessment of tuition was incorrect. For example, petitioner contends that D.Y. only attended sixth grade for ten days, rather than the 127 days found by the ALJ. Petitioner contends that the information relied upon by the ALJ in the Marano Certification, Exhibit 4, is unclear as to how many days D.Y. attended school. Finally, petitioner challenges the ALJ’s denial of her motion to suppress the Board’s evidence, and argues that the ALJ has a conflict of interest.

In its exceptions, the Board argues that the ALJ correctly found that petitioner is not a resident of North Arlington and, as such, is liable for tuition for the period of her children’s ineligible attendance. However, the Board contends that the ALJ failed to factor into consideration the payments that the Board has made to the Bergen County Technical School for W.Y.’s attendance for the months since the Board submitted its motion. Specifically, the Board contends that it is entitled to reimbursement for the additional payments made on February 28 and March 27, 2017.

In reply to the Board's exceptions, petitioner argues that the Board's calculation of tuition is false.

Upon review, the Commissioner agrees with petitioner that there are genuine issues of material fact herein, and summary decision should not be granted in this circumstance. A motion for summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue of material fact challenged and that the moving party is entitled to prevail as a matter of law." *N.J.A.C. 1:1-12.5(b)*. In evaluating such a motion, the ALJ must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." *Brill v. Guardian Life Ins. Co. of Am.*, 142 *N.J.* 520, 540 (1995).

The ALJ found that there was no material fact in dispute. "Petitioner did not submit anything to refute the factual assertions, or the documentary evidence" in the certifications submitted by the Board. (Initial Decision, at 10) The ALJ noted that "[p]ointedly, there is no rebuttal at all to the observations of the North Arlington Police Department, Mr. Gilmore, Mr. O'Connor, or to the Kearny Police Department incident reports, all of which amply demonstrate that Petitioner is a resident of Kearny, New Jersey." (Initial Decision, at 10-11)

The Commissioner notes that in opposition to the Board's motion for summary decision, petitioner submitted the following evidence to support her position that her domicile is in North Arlington: (1) the deed to her North Arlington property; (2) property tax bills; (3) a certificate of occupancy; (4) electric/gas bills and Verizon bills; (5) voter registration; (6) grand

juror summons with payment stubs for grand jury service; (7) home health aide certification; (8) photos of her North Arlington property; (9) correspondence regarding Verizon Fios service; (10) W-2; and (11) bank statements. Petitioner subsequently submitted an affidavit, certifying that – among other things – “Petitioner has three residences in the state of New Jersey and is domiciled in North Arlington, New Jersey.” (Petitioner’s affidavit, dated January 17, 2017, at ¶5)

Considering the standard for summary decision, petitioner’s certified statement that she is domiciled in North Arlington – in addition to the documentary evidence that petitioner submitted – creates a genuine issue of material fact as to petitioner’s domicile. Although the Board submitted certifications and evidence in support of its position that petitioner is domiciled in Kearny, the ALJ was required to consider the evidence in the light most favorable to petitioner, as the non-moving party. When viewing the evidence in that manner, there is a genuine issue of material fact that prevents this matter from being decided by way of summary decision. Instead, at a hearing on the merits, the ALJ will be able to make credibility determinations as to the witnesses and weigh all of the evidence presented before deciding the matter.

Accordingly, the Initial Decision of the OAL is rejected – for the reasons expressed herein – and the matter is remanded to the OAL for further proceedings.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 17, 2017

Date of Mailing: April 17, 2017



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 09260-16

AGENCY REF. NO. 149-5/16

Y.Y. ON BEHALF OF MINOR CHILDREN,

W.Y. AND D.Y.,

Petitioners,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF

NORTH ARLINGTON, BERGEN COUNTY,

Respondent,

and

BOARD OF EDUCATION OF THE VOCATIONAL

SCHOOLS OF BERGEN COUNTY,

Intervenor.

Y.Y., Petitioner, pro se

Jennifer M. Herrmann, Esq., for Respondent (Methfessel & Werbel, attorneys)

William C. Soukas, Esq., for Intervenor (Nowell, P.A., attorneys)

Timothy D. Cedrone, Esq., for movant Town of Kearny (Apruzzese, McDermott,
Mastro & Murphy, attorneys)

Record Closed: January 23, 2017

Decided: February 28, 2017

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner challenges the residency decision of Respondent. The Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed on June 22, 2016 as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A prehearing conference was held on July 12, 2016, and a prehearing Order was entered by the undersigned on July 13, 2016.

An amended prehearing Order was entered by the undersigned on August 19, 2016.

The Board of Education of the Vocational Schools in Bergen County filed a motion to intervene on August 1, 2016. Respondent filed its response to said motion on August 3, 2016, wherein it indicated it had no objection to said motion being granted. Petitioner did not file a response to said motion. An Order granting the motion was entered by the undersigned on August 17, 2016.

Respondent filed a motion for leave to amend its Answer, and include a Counterclaim, on August 22, 2016. Petitioner filed a letter in opposition to said motion on August 22, 2016. An Order granting the motion was entered by the undersigned on August 23, 2016. Respondent filed an Amended Answer and Counterclaim seeking tuition reimbursement, dated August 23, 2016.

Respondent filed a motion for Summary Decision dated November 1, 2016. Petitioner was granted an extension of time to respond to said motion, with the consent of Respondent, until December 1, 2016. Interpleader filed a brief in support of its interests on December 2, 2016.

The Town of Kearny filed a motion to Quash a Subpoena issued by Petitioner. Said Motion was filed on November 16, 2016. Respondent, Petitioner, and Interpleader filed no response thereto.

Respondent filed a motion to Quash a Subpoena issued by Petitioner. Said motion was filed on November 28, 2016. Respondent requested a telephone conference as well. A telephone conference was held on November 29, 2016, wherein the undersigned advised the parties that discovery was closed and that no further discovery requests shall be made. Petitioner was also given until January 2, 2017, to file their opposition to Respondent's motion for summary decision.

Petitioners filed their response to Respondent's motion to Quash a Subpoena on December 12, 2016.

By Order dated December 28, 2016, the motions to quash subpoenas filed by the Town of Kearny and Respondent were granted; and, Petitioner's request for discovery was also granted.

Petitioner filed a brief in opposition to Respondent's motion for summary decision on January 3, 2017. Respondent filed its reply thereto on January 17, 2017. Petitioner filed a certificate of mailing and an affidavit on January 23, 2017.

Petitioner filed a motion to suppress evidence on January 9, 2017.

FACTUAL DISCUSSION

Respondent, in support of its motion for summary decision, filed the following:

1. Certification of Dr. Oliver W. Stringham, Superintendent of the North Arlington Public Schools (District), wherein Dr. Stringham asserts he sent a letter, dated November 2, 2015, to Petitioner at xxx Park Place, Kearny, New Jersey, and xx Union Place, North Arlington, New Jersey. (Exhibit 1.) In said letter Dr.

Stringham advised Petitioner that her children, D.Y. and W.Y., could continue their enrollment in the District until the Board of Education (Board) could review evidence and make a determination as to residency. (Exhibit 1, p. 1.) Petitioner was invited to a closed hearing before the Board on November 16, 2015. (Exhibit 1, pp. 2-3.)

2. Certification of Kathleen Marano, Business Administrator for the District, wherein Ms. Marano outlined the District's concern over Petitioner's residency. Part of her duties includes attending all Board meetings and record minutes of the meetings. Petitioner was requested to provide proof of residency by North Arlington Middle School Principal Nicole Russo, at the instruction of Dr. Stringham. The Board reviewed documents provided by Petitioner, including a utility bill for the North Arlington house in the amount of \$54, which the Board believed to be too low. (Exhibit 1.) The Board also reviewed a police report prepared by North Arlington Police Department Detective Anthony Scala. (Exhibit 2.) Detective Scala, on September 16 and 17, 2015, observed a vehicle registered to Petitioner parked in the same spot for two consecutive days in front of the North Arlington house. On September 17, 2015, at 6:30 a.m. Detective Scala observed Petitioner and a teenage male leave 105 Park Place in Kearny, New Jersey, and enter a vehicle registered to Petitioner and travel to an unknown location. (Exhibit 2.) Approximately an hour later he observed D.Y. exit the Kearny residence and enter a Toyota Sienna with an elderly man, who dropped D.Y. off at school in North Arlington. Detective Scala informed Petitioner of his observations and Petitioner admitted that she drove W.Y. to school from the Kearny residence. Ms. Marano also states the Board was advised of surveillance video taken in February and April 2016 showing Petitioner and her sons engaging in activities of daily living at the Kearny residence, including departing for school in North Arlington. The Board also reviewed screen shots of the video. (Exhibit 3.) At the residency hearing on December 14, 2015, the Board requested that Petitioner allow a Board member, the Board attorney, with Petitioner and her attorney, to visit her residence in North Arlington. Petitioner refused and requested another hearing date. The new date was May 2, 2016. After fifteen minutes, Petitioner left the meeting as

the Board was not immediately available to her. This determined that Petitioner and her sons did not reside in North Arlington. D.Y. and W.Y. were dis-enrolled on May 4, 2016. W.Y. continues to attend Bergen County Technical Schools at the District's expense. Mr. Marano then outlined tuition costs for both W.Y. and D.Y. (Exhibits 5, 6, and 7.)

3. Certification of Matthew Gilmore, who resided at xxx Park Place, Kearny, New Jersey, the house adjacent to Petitioner's Kearny residence. Mr. Gilmore no longer resides at this address, but his mother continues to reside there. Mr. Gilmore reviews the surveillance video obtained from the Park Place address. The video shows Petitioner, her husband, and two sons engaging in activities of daily living at Petitioner's Kearny residence. The undersigned viewed the video in its entirety. Additionally, Mr. Gilmore sets forth his personal observations of Petitioner during the time he resided at xxx Park Place, where he consistently saw Petitioner and her two sons leave their Kearny residence early in the morning at various times during the year.

Respondent, in opposition to the motion for summary decision, filed the following:

1. Affidavit of Petitioner wherein Petitioner merely states there are genuine issues in dispute which warrant an evidentiary hearing.

FINDINGS OF FACT

1. The North Arlington Board of Education is a School District in the County of Bergen.
2. The Township of Kearny is in Hudson County.
3. D.Y. attended fourth grade in the District for eighty-four days for the 2013/2014 school year. (Marano Certification, ¶22, Exhibit 4, NASD 0291-292.)
4. In the 2013/2014 school year the pupil tuition rate for grades one through five was \$11,307. (Marano Certification, Exhibit 4, NASD 0293.)

5. D.Y. attended fifth grade in the District for 168 days for the 2014/2015 school year. (Marano Certification, Exhibit 4, NASD 0289-290.)
6. In the 2014/2015 school year the pupil tuition rate for grades one through five was \$10,844. (Marano Certification, Exhibit 5, NASD 0294.)
7. D.Y. attended sixth grade in the District for 127 days for the 2015/2016 school year. (Marano Certification, Exhibit 4, NASD 0287-288.)
8. In the 2015/2016 school year the pupil tuition rate for grades six through eight was \$12,290. (Marano Certification, Exhibit 5, NASD 0295.)
9. In the 2014/2015 school year the District paid Bergen County Technical Schools (Bergen Tech) \$8,568 on behalf of W.Y. (Marano Certification, Exhibit 5, NASD 00235-245.)
10. In the 2015/2016 school year the District paid Bergen Tech \$7,081 on behalf of W.Y. (Marano Certification, Exhibit 6, NASD 00246-249.)
11. As of October 28, 2016, in the 2016/2017 the District has paid Bergen Tech \$940 on behalf of W.Y. (Marano Certification, Exhibit 7, NASD 00296-297.)
12. The District has received an invoice from Bergen Tech for W.Y. in the amount of \$841. (Marano Certification, Exhibit 7, NASD 0297.)
13. W.Y. attends the Bergen Tech presently. He has attended Bergen Tech for the 2014/2015, 2015/2016 and 2016/2017 school years. (Marano Certification, Exhibit 4, NASD 0235-245, 0246-249, 0296-297.)
14. North Arlington Police Department surveillance of Petitioner's residences in North Arlington and Kearny on September 16 and 17, 2015, shows Petitioner and her two sons residing at the Kearny residence. Petitioner admitted to North Arlington Police that she did drive W.Y. to school. (Marano Certification, Exhibit 2.)
15. Kearny Police Department incident reports dated May 7, 2014, May 23, 2014, September 15, 2014, June 18, 2015, and July 26, 2016, show Petitioner and her

two sons residing at the Kearny residence over an extended period of time. (Herrmann Certification, Exhibits B, C, D, E, and H.)

16. The report of private investigator James O'Conner, retained by the District shows Petitioner driving her son to Bergen Tech from the Kearny residence on October 13, 2016, at approximately 7:03 a.m.
17. Matthew Gilmore's Certification establishes that Petitioner and her two sons resided at their Kearny residence at least since 2014 through the present via both his personal observations and the video obtained from his mother's surveillance camera.
18. A review of the video surveillance clearly shows Petitioner, her husband, and her two sons residing at the Kearny residence at the times the video was made: February 25, 2016; April 4, 2016; April 5, 2016; April 18, 2016; July 13, 2016; July 14, 2016; July 15, 2016; July 18, 2016; September 8, 2016; and, September 17, 2016. (Gilmore Certification, Exhibits 1, 2, 3, 3a, 3b, 4, 4a, 4b, 4c, 4d, 5, 5a, 5b, 5c, 5d, 5e, 6, 6a, 6b, 6c, 7, 7a, 7b, 7c, 7d, 8, 8a, 8b, 8c, 8d, 8e, 9, 9a, 9b, 9c, 9d, 9e, 10, 10a, and 10b.)
19. The District informed Petitioner via letter from Dr. Stringham that the District does not believe she resides in North Arlington and afforded her the opportunity to appear before the Board. Said letter also informed Petitioner of her right to appeal to the Commissioner of the Department of Education, and that D.Y. and W.Y. could remain in the District pending the outcome of the appeal. (Stringham Certification, Exhibit 1.)
20. The District, also via letter from Dr. Stringham, informed Petitioner that she may be assessed the costs of tuition for D.Y. and W.Y. should she not prevail on the residency appeal. (Stringham Certification, Exhibit 1.)
21. A residency hearing was held on December 14, 2015, at which time a Board requested of Petitioner that a Board member, the Board attorney, Petitioner and Petitioner's attorney visit the North Arlington residence. Petitioner refused.

Petitioner requested another hearing date. (Marano Certification, ¶13, ¶14, and ¶15.)

22. A residency hearing was held before the Board on May 2, 2016, wherein the Board determined that Petitioner did not reside in North Arlington. (Marano Certification, ¶15, ¶19.)

23. Petitioner left before the residency hearing commenced, approximately fifteen minutes after arriving. (Marano Certification ¶16 and ¶17.)

24. D.Y. and W.Y. were dis-enrolled on May 4, 2016. (Marano Certification, ¶20.)

25. Petitioner had previously filed a Residency Appeal on October 6, 2015. (Herrmann Certification, Exhibit A.)

26. Petitioner resides in Kearny, New Jersey, Hudson County, and has since at least the 2014/2015 school year to the present.

27. During the 2014/2015 school year there were twenty-three days of compensable ineligible attendance (May 23, 2015, through June 24, 2015) for a total of \$1,385.52 for D.Y. and \$1,094.80 for W.Y. (Marano 2nd Supp. Cert. ¶3.)

28. During the 2015/2016 school year there were 129 days of compensable ineligible attendance (September 2015 through May 2, 2016) for a total of \$8,808.12. (Marano Certification, Exhibit 4.)

29. During the 2015/2016 school year Respondent paid Bergen County Technical Schools \$7,081.00 on behalf of W.Y. (Marano Certification, Exhibit 6.)

30. During the 2016-2017 school year Respondent paid Bergen County Technical Schools \$3,514.00 to date on behalf of W.Y. (Marano 2nd Supp. Cert., Exhibit 8.)

LEGAL ANALYSIS AND CONCLUSION

Petitioner's Motion to Suppress

Initially, I will address the Petitioner's motion to suppress evidence. The concept of suppressing evidence, called the exclusionary rule, is found in criminal proceedings, and is used where law enforcement runs afoul of the Fourth Amendment to the United States Constitution. See Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961); Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

The Fourth Amendment of the U.S. Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The exclusionary rule is rare in administrative proceedings. See New Brunswick v. Speights, 157 N.J. Super. 9 (App. Div. 1978). I cannot find anything that would invoke the exclusionary rule in the instant matter. The evidence complained of consists mostly of video surveillance obtained from Petitioner's neighbor in Kearny, New Jersey, and a North Arlington Police Department report. Both were obtained without need for a warrant. The other evidence Petitioner seeks to suppress, outlined in the brief in support of the motion, and also did not violate any rights of Petitioner.

Petitioner raises four additional points in the motion to suppress, all of which are without basis and do not merit discussion herein.

It must be noted herein that this matter is an administrative proceeding where the rules of evidence are relaxed. In an administrative hearing all relevant evidence is admissible. See Delguidice v. New Jersey Racing Comm'n, 100 N.J. 79 (1985).

I **CONCLUDE** that Petitioner's motion to suppress evidence should be denied.

Standard for Summary Decision

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . , are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

In the instant matter there is no material fact in dispute. Petitioner did not submit anything to refute the factual assertions, or the documentary evidence in Certifications of Kathleen Marano, Dr. Oliver Stringham, Matthew Gilmore, and Jennifer Herrmann, Esq. Pointedly, there is no rebuttal at all to the observations of the North Arlington Police Department, Mr. Gilmore, Mr. O’Connor, or to the Kearny Police Department incident reports, all of which amply demonstrate that Petitioner is a resident of Kearny, New Jersey.

Further, Petitioner does not dispute what is clearly shown on the video evidence obtained from home surveillance camera of her neighbor in Kearny. Rather, Petitioner sought to have the same excluded.

I **CONCLUDE** that there is no dispute as to a material fact and that Respondent’s motion for summary decision should be granted.

N.J.S.A. 18A:38-1(a) and N.J.A.C. 6A:22-3.1(a) sets forth the right of a student to a free public education, which in pertinent parts states:

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

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

Consideration in proving residency for purposes of establishing eligibility for school district placement is found at N.J.A.C. 6A:22-3.4(a),

(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;

...

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;

...

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 in (a) above, and shall not exclude

from consideration any documentation or information presented by a person seeking to enroll a student.

(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 of documentation, or a particular subset of documents, without regard to other evidence presented.

In S.S. ex rel. A.S. and A.S. v. Board of Education of the Township of Marlboro, Monmouth County, EDU 192-12, Initial Decision (August 26, 2013), <http://njlaw.rutgers.edu/collections/oal>, evidence submitted by an investigator hired by the Marlboro New Jersey School District to determine whether certain minor children who were enrolled in the school district in fact were domiciled therein within the meaning of N.J.A.C. 6A:22-3.1(a) was sufficient to establish that the children in fact were not domiciled in the district during the period in question and, instead, supported a conclusion that the minors resided at their grandmother's home in Edison New Jersey. Even though their mother had submitted documentation of the type described in N.J.A.C. 6A:22-3.4(a) that supported her claim that the minors were domiciled in Marlboro, the circumstances of the mother's employment, which included late hours, was such that the minors were properly found to be residing with their grandmother. On that basis, the administrative law judge recommended that the Department of Education find the mother liable for tuition for the minors.

In the instant matter the District provided substantially more than the report of an investigator hired by the District. Submitted were a North Arlington Police Department report wherein the police observed Petitioner at the Kearny residence; several Kearny Police Department incident reports involving Petitioner and a neighbor at the Kearny residence; and, video surveillance showing Petitioner, her husband, and her two sons coming and going from the Kearny residence and performing activities of daily living. The inescapable conclusion is that Petitioner resides in Kearny.

If a school district discovers that a non-resident child is attending one of its schools, the district may act to remove the child. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.3. If so, the chief school administrator must first issue a notice

of ineligibility. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.2, -4.3. The notice shall inform the parent of the right to a hearing before the school district and the right to appeal the school district's decision to the Commissioner of Education. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-5.1. The notice shall also inform the parent whether the district's policy allows for continued attendance, with or without tuition, for students who move out of the district during the course of the school year. N.J.A.C. 6A:22-4.2(b)(7)(i). If, on appeal to the Commissioner, the parent fails to demonstrate his child's entitlement to attend the schools of the district, the parent may be liable for tuition for any period of ineligible attendance. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.2; N.J.A.C. 6A:22-6.2, -6.3. Petitioner received adequate notice via a letter from the District Superintendent, Dr. Stringham. Petitioner's claim of a denial of due process must fail.

According to N.J.A.C. 6A:22-6.3(a), "[t]uition assessed pursuant to the provisions of this section shall be calculated on a per student basis for the period of a student's ineligible enrollment, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23-3.1."

Petitioner alleges that the District acted in an arbitrary, capricious and unreasonable manner in her appeal to the Commissioner of Education.

An action by a board of education "is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable." Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Thus, in order to prevail, Petitioner "must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." G.H. and E.H. ex rel. K.H. v. Bd. of Educ. of the Bor. of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) (citation omitted), <<http://njlaw.rutgers.edu/collections/oal/>>, adopted, Comm'r (April 10, 2014). Also, a board's decision may be overturned if its determination violates the legislative policies expressed or implied in the governing act. J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of

Civil Serv., 39 N.J. 556, 562 (1963)), adopted, Comm'r (April 25, 2013), <<http://njlaw.rutgers.edu/collections/oal/>>.

Petitioner asserts nothing in the brief addressing these issues. Moreover, I cannot ascertain anything remotely arbitrary, unreasonable or capricious in the record regarding District's actions in this matter.

I **CONCLUDE** that Petitioner failed to demonstrate that D.Y. and W.Y. are entitled to attend the District's schools, that Petitioner is liable for tuition for the period of ineligible attendance and that Petitioner's appeal should be dismissed.

ORDER

Based upon the forgoing, it is **ORDERED** that Respondent's motion for summary decision is **GRANTED**; and,

It is further **ORDERED** that Petitioner's motion to suppress evidence is **DENIED**; and,

It is further **ORDERED** that Petitioner's appeal is **DISMISSED** with prejudice; and,

It is further **ORDERED** that Petitioner reimburse Respondent tuition as follows:

- 2014-2015 school year, \$1,385.52 for D.Y. and \$1,094.80 for W.Y. for a total of \$2,480.32.
- 2015-2016 school year, \$8,808.12 for D.Y. and \$7,081.00 for W.Y. for a total of \$15,889.12.
- 2016-2017 school year, \$3,514.50 for W.Y.

Total tuition to be reimbursed by Petitioner to Respondent totals \$21,883.94.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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

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

February 28, 2017



DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

For Petitioner:

Brief in opposition to Motion for Summary Decision dated January 2, 2017, with Exhibits 1 through 21

Affidavit of Petitioner dated January 23, 2017

Motion to suppress evidence dated January 9, 2017, with Exhibits 1 through 8

For Respondent:

Motion for Summary Decision dated November 1, 2016

Brief in support of Summary Decision motion dated November 1, 2016, with Exhibits A through Q

Certification of Jennifer M. Herrmann, Esq., dated November 1, 2016

Certification of Matthew Gilmore dated August 2016 with Exhibits 1 through 10c¹

Certification of Dr. Oliver W. Stringham dated November 4, 2014, with Exhibit 1

Certification of Kathleen Marano dated October 28, 2016 with Exhibits 1 through 7

Respondent's reply brief to Petitioner's brief, dated January 10, 2017, with Exhibit R

Second Supplemental Certification of Kathleen Marano dated February 8, 2017, Exhibit 8

For Intervenor:

Letter brief dated December 1, 2016

Certification of Howard Lerner, Ed.D., with Exhibits a through E

¹ Exhibits for Mr. Gilmore's certification are found on the computer flash drive containing video or Petitioner's Kearny property.