

K.K.-M., on behalf of minor children, A.W. and R.M.,	:	
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PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	
	:	DECISION
BOARD OF EDUCATION OF THE CITY OF GLOUCESTER CITY, CAMDEN COUNTY,	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner appealed the determination of the respondent Board that A.W. and R.M. are no longer eligible to receive a free public education in the Gloucester City School District. The minor children had been registered in respondent’s District for the 2013-2014 school year; at that time, they were residing with their birth mother, B.W., who is domiciled in Gloucester City. Subsequently, the children entered the foster care system, and were temporarily placed in resource family homes, including placements in the home of K.K.-M., who is not a resident of Gloucester City. The children continued to attend respondent’s schools, and in May 2017, K.K.-M. was granted “Kinship Legal Guardianship” over A.W. and R.M. by order of the Superior Court of New Jersey. Thereafter, the petitioner was notified that the children needed to be transferred to schools in K.K.-M.’s district of residence. K.K.-M. argued, *inter alia*, that the children are eligible and entitled to remain in respondent’s school district under a best interest stability determination issued by the New Jersey Department of Children and Families, Division of Child Protection & Permanency (DCP&P). The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; A.W. and R.M. are not entitled to attend school in Gloucester City schools because K.K.-M. is now their legal guardian by virtue of being appointed the children’s Kinship Legal Guardian; A.W. and R.M. are therefore considered to be domiciled with K.K.-M.; and because K.K.-M. is domiciled outside of Gloucester City, the children should be enrolled in schools within petitioner’s district of residence. Accordingly, the ALJ granted the Board’s cross motion for summary decision, and denied petitioner’s cross motion.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, and the petition was dismissed.

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.



have not been terminated. Petitioner further argues that she never had the opportunity at the OAL to challenge the “legal conclusions” made by an employee of the Camden County Office of Education and the Department of Child Protection and Permanency (DCP&P). Petitioner contends that the ALJ erred when she failed to find that the Board was aware of K.K.-M.’s status as the KLG as of May 17, 2017, and further erred in finding that the Board brought its residency challenge roughly two months after K.K.-M. was appointed KLG, when the Board’s Preliminary Notice of Ineligibility was not sent until December 13, 2017 – almost seven months after K.K.-M. was appointed KLG. With regard to the legal conclusions, petitioner argues that the ALJ erred in finding A.W. and R.M. were not entitled to remain in the District because B.W. is domiciled in Gloucester City and her parental rights were not terminated. Petitioner argues that the ALJ improperly found that the Board did not waive its rights to challenge A.W. and R.M.’s residency. Petitioner submits that the “best interests determination” does not terminate upon appointment of a KLG. Petitioner further submits that the Individuals with Disabilities Education Act (IDEA) prevails over any State residency law and stay-put applies in this matter. Lastly, petitioner argues that the ALJ erred by not having a hearing on the issues of equitable estoppel.

In reply, the Board argues that petitioner’s supplemental certification should not be considered as part of the exceptions, as the exhibits were not presented at the hearing. Additionally, respondent asserts that issues of fact raised by petitioner are not material to the legal determination. The Board further argues that once K.K.-M. was appointed KLG, the “best interests determination” became inoperative, and that the ALJ properly determined A.W.’s and R.M.’s domicile for the purposes of school attendance was with K.K.-M. The Board also argues that it did not waive its rights to challenge petitioner’s residency. Lastly, the Board submits that

the ALJ properly determined that the IDEA's stay-put provision and petitioner's contentions relating to equitable estoppel are inapplicable in this matter.

Upon such review, the Commissioner adopts the ALJ's recommended decision – for the reasons substantially set forth in the Initial Decision and as modified herein – finding that A.W. and R.M. are not entitled to attend school in the District, as their KLG is not domiciled in Gloucester City.

As a preliminary matter, the Commissioner notes that despite the relaxation of the rules of evidence in administrative hearings, litigants must nonetheless offer into evidence any relevant documents and exhibits that they wish to be considered in support of their case. *See N.J.S.A. 52:14B-10, N.J.A.C. 1:1-15.1, N.J.A.C. 1:1-15.7.* In this matter, petitioner failed to provide the supplemental certification and the attached exhibits to the OAL for consideration during the hearing. Therefore, pursuant to the *N.J.A.C. 1:1-18.4(c)*, the Commissioner will not consider the supplemental certification as part of his review of this matter.

The Commissioner further finds petitioner's factual contentions are without merit. The Commissioner considers the factual findings and determinations of the ALJ essential – and relies on same – in rendering the final agency decision. The Commissioner may reject or modify findings of fact; however, in this case, there is no basis for the Commissioner to question the ALJ's findings of fact. Therefore, the Commissioner accepts the facts as thoroughly set forth in the Initial Decision, and as corroborated by evidence in the record. *See N.J.S.A. 52:14B-10(c).* Furthermore, the alleged errors of fact enumerated by petitioner are not germane to the adjudication of this matter. Significantly – while residency matters indubitably require fact-specific analysis – in this case, the Commissioner finds that there are sufficient relevant facts that

are undisputed, and the underlying issue can be decided as a matter of law. Therefore, the ALJ properly granted summary decision in this matter.

With regard to petitioner's exceptions relating to "stay-put," and petitioner's request for equitable relief under the doctrine of equitable estoppel, the Commissioner finds both without merit. Firstly, stay-put is inapplicable in this matter, and beyond the purview of the Commissioner. Therefore, any allegations of violation of the IDEA or the stay-put provision is a separate issue. Secondly, there is no legal basis for the Commissioner to consider the doctrine of equitable estoppel in determining a residency appeal when such determination is governed by the school laws of the State and the pertinent residency statutes and regulations found therein. Therefore, in determining whether A.W. and R.M. are entitled to attend school in the District, the Commissioner cannot consider petitioner's arguments related to equitable estoppel.

The Commissioner also finds that the Board did not "waive its rights" to "challenge" A.W. and R.M.'s residency. A board of education does not "challenge" a student's residency; rather, if a student is deemed and ultimately found ineligible, the board is entitled to initiate the procedures for disenrollment. The student and/or parents/guardians may then challenge the board's determination. The notion that a board may waive its rights in making eligibility determinations or in seeking disenrollment of an ineligible student – and are only allowed to do so within a certain time period – contradicts the residency statutes and regulations.<sup>2</sup> Therefore, the amount of time that lapsed between K.K.-M.'s notification to the District of her appointment as KLG, and the Board's subsequent determination and notice of ineligibility, was by no means unreasonable or improper.

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<sup>2</sup> The only limitation on boards in such cases pertains to the amount of tuition a board may be reimbursed if it prevails, which is designed to ensure that boards do not delay in taking action, while protecting parents/guardians from potentially accruing years of tuition.

The pivotal issue here is the parties' understanding of KLG and how it affects A.W. and R.M.'s domicile for purposes of schooling. Petitioner argues that B.W.'s domicile in the District controls because her parental rights were not terminated when K.K.-M. was appointed KLG, and the children are entitled to attend school where the parent is domiciled. Petitioner further argues that K.K.-M.'s KLG status does not terminate the "best interests determination" for the purposes of A.W. and R.M.'s education, and DCP&P's previous determination that A.W. and R.M. remain in the District prevails. It is clear that petitioner has conflated KLG with foster care and resource home placements.<sup>3</sup> KLG is intended to be a permanent and self-sustaining legal guardianship awarded by the courts to a caregiver who assumes the care and custody of a child with the intent to raise the child to adulthood, due to parental incapacity. *See N.J.S.A. 3B:12A-1 and 2.* A KLG is responsible for the care and protection of the child, and for providing for the child's health, education and maintenance, and has the same rights, responsibilities and authority relating to the child as a birth parent. *N.J.S.A. 3B:12A-2 and 4.* While such an arrangement does not terminate parental rights, it does transfer a child's care, custody and legal guardianship to the KLG, which far exceeds the scope of a foster or resource family home placement. Therefore, given the nature of such a guardianship, it is not necessary to conduct a best interests determination, as the child's domicile for the purposes of schooling is the school district of the KLG.<sup>4</sup>

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<sup>3</sup> The Commissioner incorporates by reference the ALJ's discussion relating to resource family homes and foster care placement on pages 8 and 9 of the Initial Decision.

<sup>4</sup> Even if children who are under the care of a KLG were entitled to attend school where the parents are domiciled (if the parent(s) and the KLG are domiciled in different school districts) and there is no court order or agreement designating the school district of attendance, the students' domicile for purposes of schooling would be the school district of the individual with whom the student lives for the majority of the school year, *i.e.*, the KLG. *See N.J.A.C. 6A:22-3.1(a)(1)(i)* ("[w]hen a student's parents or guardians are domiciled within different school districts and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year. This subparagraph shall apply regardless of which parent has legal custody.")

Accordingly, the Initial Decision of the OAL – granting respondent’s cross-motion for summary decision and denying petitioner’s motion for summary decision – is adopted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 4, 2018

Date of Mailing: October 4, 2018

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<sup>5</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION GRANTING**  
**RESPONDENT'S MOTION FOR**  
**SUMMARY DECISION AND DENYING**  
**PETITIONER'S MOTION FOR**  
**SUMMARY DECISION**

OAL DKT. NO. EDU 2505-18

AGENCY DKT. NO. 18-1/18

**K.K.-M. ON BEHALF OF MINOR  
CHILDREN A.W. AND R.M.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE  
CITY OF GLOUCESTER CITY,  
CAMDEN COUNTY,**

Respondent.

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**Robert C. Thurston**, Esq., on behalf of petitioners (Thurston Law Offices LLC)

**Kaylee Egan**, Esq., on behalf of respondent (Parker McCay, P.A., attorneys)

Record Closed: July 31, 2018

Decided: August 28, 2018

BEFORE **LISA JAMES-BEAVERS**, Acting Director and Chief ALJ:



## **STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This case arises out of a residency appeal filed by petitioner K.K.-M. on behalf of minor children A.W. and R.M. In brief, K.K.-M. seeks to continue A.W. and R.M.'s education in the Gloucester City Public Schools ("Gloucester") after respondent Gloucester City Board of Education (Board) determined that A.W. and R.M. were no longer eligible to receive a free public education in the district.

A.W. and R.M. were registered at Gloucester for the 2013–14 school year. At that time, both children were residing with their birth mother, B.W., and R.M., R.M.'s father, within the Gloucester City School District. In September 2013, A.W. and R.M. were temporarily placed with K.K.-M. as a resource family home by the New Jersey Department of Children and Families, Division of Child Protection & Permanency ("DCP&P"). DCP&P subsequently returned A.W. and R.M. to B.W. However, in August 2015, DCP&P again removed A.W. and R.M. from their parents' home and placed them with a different foster parent for a short period. On September 11, 2015, DCP&P transferred A.W. and R.M.'s foster home placement to K.K.-M. K.K.-M. does not reside in the Gloucester City School District.

On August 12, 2016, DCP&P sent a fax to Gloucester transmitting identical "Education Stability" letters pertaining to A.W. and R.M.<sup>6</sup> Each letter indicated that DCP&P had "completed the education stability assessment and has determined that the child will remain in his or her current school—Gloucester City." (Board Motion, Exh. A.) Thereafter, A.W. and R.M. continued to be enrolled for the 2016–17 school year at Gloucester.

On May 16, 2017, K.K.-M. was granted "Kinship Legal Guardianship" over A.W. and R.M. by order of the Superior Court of New Jersey.<sup>7</sup> The order as to A.W. provides

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<sup>6</sup> As noted by the Board, only R.M.'s stability letter could be located, but the Board stipulates that A.W.'s letter was identical to R.M.'s.

<sup>7</sup> See Kinship Matter of A.W., Superior Ct. of New Jersey, Chancery Div., Family Part, Camden Cty., No. FL – 04-164-17; Kinship Matter of R.M., Superior Ct. of New Jersey, Chancery Div., Family Part, Camden Cty., No. FL – 04-165-17. These are attached as Board Mot., Exh. B.

for both birth parents to receive supervised visitation by either a Kinship Legal Guardian or a “Division approved supervisor.” (Board Motion, Exh. B.) The order as to R.M. does not reference DCP&P but does require the father to separately apply for visitation due a lack of contact. Ibid. Both orders terminate the Kinship Legal Guardianship “when the child reaches 18 years of age or when the child is no longer continuously enrolled in high school, whichever event occurs later, or when Kinship Legal Guardianship is otherwise terminated by the court.” Ibid.

On October 24, 2017, Gloucester Superintendent Dr. Dennis Vespe sent an email to K.K.-M. inviting her to a meeting where he informed her that the District’s position was “that A.W. and R.M. should enroll at . . . Laurel Springs . . . and transfer out of the District.” On November 1, 2017, Stephanie Wiley, an Administrative Assistant for the Child Study Team Supervisor and Educational Specialists, Camden County Office of Education, wrote to Dr. Vespe to indicate that DCP&P had closed A.W. and R.M.’s case and that “[t]his finding determines it necessary for the children to be transferred to [K.K.-M.]’s district of residency.”

On December 11, 2017, DCP&P responded to an inquiry by Dr. Vespe “regarding the education stability law and how it applies to [R.M. and A.W.]” DCP&P wrote that “[o]nce the court order was signed the children were no longer in the custody of the Division and therefore the education stability law allowing them to remain in the Gloucester City School System does not apply.” (Board Motion, Exh. D.)

On December 13, 2017, Dr. Vespe sent K.K.-M. a “Preliminary Notice of Ineligibility regarding [R.M. and A.W.]” indicating that “[R.M. and A.W.] are not domiciled within the Gloucester City School District (‘District’) and instead are domiciled within the Blackhorse Pike Regional School District.”<sup>8</sup> On December 19, 2017, Dr. Vespe sent a

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<sup>8</sup> K.K.-M. first refers to Blackhorse Pike Regional School District as “cover[ing] K.K.-M.’s residence . . . .” K.K.-M. Mot., p. 10, fn. 5. However, K.K.-M. later notes that Laurel Springs School District sends its high school students pursuant to a send/receive relationship to Sterling High School, a regional high school district. K.K.-M. Opp., p. 2., fn. 1.

After using Google Maps, K.K.-M.’s residence is apparently in Gloucester Township, within the Blackhorse Pike School District. Laurel Springs School District does not apparently include K.K.-M.’s address, which can also be

hearing notice to K.K.-M. indicating that the Board had scheduled a January 9, 2018, meeting to discuss R.M. and A.W.'s residency. The same day, the Board's counsel sent K.K.-M. a letter explaining the "basis for the Superintendent's determination of ineligibility." (Board Motion, Exh. G.) The letter reiterated the Board's position that once K.K.-M. became Kinship Legal Guardian to R.M. and A.W., she was the parent for residency purposes.

After the January 9, 2018, hearing, on January 11, 2018, Dr. Vespe sent a Notice of Final Ineligibility of R.M. and A.W. to K.K.-M. On January 21, 2018, K.K.-M. filed an appeal of the final ineligibility notice. On February 15, 2018, the appeal was transmitted to the OAL for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On May 17, 2018, K.K.-M. filed a motion for summary decision. On July 3, 2018, K.K.-M. filed an amended motion for summary decision, including a separate request for sanctions against the Board. On July 3, 2018, the Board filed a cross motion for summary decision. On July 23, 2018, K.K.-M. filed opposition to the Board's cross motion for summary decision. On July 24, 2018, the Board filed opposition to K.K.-M.'s motion for summary decision. On July 25, 2018, K.K.-M. filed a reply to the Board's opposition and again requested sanctions against the Board. On July 31, 2018, the Board filed a reply to K.K.-M.'s opposition.

This issue is whether petitioner's or respondent's motion for summary decision should be granted and whether sanctions against the Board are warranted.

## **LEGAL ANALYSIS**

### **I. Summary Decision Standard**

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a

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read as being in Clementon, NJ. Gloucester Township is not to be confused with Gloucester City, where respondent in this case is located.

contested case.” N.J.A.C. 1:1-12.5(a). 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 as to any 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). Here, there are no material facts in dispute; therefore, this case is ripe for summary decision.

## **II. A.W. and R.M. are not entitled to attend school in Gloucester City.<sup>9</sup>**

K.K.-M. argues that “under the Fostering Connections Act and New Jersey Education Stability Act or under the doctrine of waiver . . . A.W. and R.M. are eligible and entitled to remain enrolled at [Gloucester].”<sup>10</sup> (K.K.-M. Motion at 9.) Specifically, K.K.-M. asserts that the Board did not timely challenge DCP&P’s best interest stability determination and, as foster children, A.W. and R.M. are entitled to remain at Gloucester until a new best interest determination is issued by DCP&P.<sup>11</sup> Id. at 9–12.

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<sup>9</sup> Additionally, the Board argues in its motion for summary decision that the issue of stay put under the IDEA—raised in K.K.-M.’s original petition—should be addressed under the unconsolidated special education case and not during this residency appeal. Board Mot., p. 15. Alternatively, the Board argues K.K.-M. is not entitled to stay put in the district because stay put is not location specific. Id. at p. 15–16. Lastly, the Board argues that even if K.K.-M. is entitled to stay put at Gloucester City High School the Board is not required to fund that placement because K.K.-M. does not reside in the district. Id. at 16.

K.K.-M. responds that “there is a conflict between the issues of ‘stay put’ and New Jersey residency law that is the basis of the current controversy.” (K.K.-M. Opp. at 19–20. K.K.-M.) disputes that stay-put case law involving moving a student within the same school likewise permits removing a child from the school district entirely. Id. at p. 20. Rather, K.K.-M. argues removal from Gloucester would be a significant change on A.W. and R.M.’s learning experience and a violation of stay put. K.K.-M. then argues that the stay put provision under the IDEA pre-empts New Jersey school residency law.

Stay put is a matter best decided in the context of the special education case and not the present motion. That said, J.F. v. Byram Twp. Bd. of Educ., 629 F. App’x 235, 238 (3d Cir. 2015) (citing Michael C. v. Radnor Twp. Sch. Dist., 202 F.3d 642, 651 (3d Cir. 2000)) provides some analogous insight into the scope of stay put protection where educational jurisdiction changes. See also N.J.A.C. 6A:14-4.1 (requiring immediate review of previous IEP when a student transfers to another district and a program comparable to the student’s previous IEP until a new IEP can be implemented).

<sup>10</sup> K.K.-M. makes a related argument that, pursuant to N.J.S.A. 18A:7B-12(a)(2), Gloucester’s dispute is with Black Horse Pike Regional School District, covering K.K.-M.’s residence, for funding. (K.K.-M. Mot. At 10.) However, N.J.S.A. 18A:7B-12(a)(2) states “the district of residence shall be the present district of residence of the parent or guardian with whom the child lived prior to the most recent placement in a resource family home.” (emphasis added).

Thus, B.W.’s residence would be the district of residence for funding purposes during A.W. and R.M.’s placement with K.K.-M. as a resource family home. However, as discussed further below, once K.K.-M. became A.W. and R.M.’s Kinship Legal Guardian this funding determination no longer applies.

<sup>11</sup> K.K.-M. also includes a claim that “A.W. and R.M. are eligible for protection under the federal Every Student Succeeds Act of 2015[.]” (K.K.-M. Motion at 9.) (emphasis in original). However, there is no further explanation

K.K.-M. also argues that B.W.'s parental rights have not been terminated and A.W. and R.M. have the right to attend school in B.W.'s district of residence, Gloucester City. Id. at 13. In contrast, K.K.-M. characterizes her own Kinship Legal Guardianship as merely "temporary" because it expires when R.M. and A.W. turn eighteen years old, graduate high school or upon an order by Superior Court. Ibid.

K.K.-M. argues that "[the Board] cannot now try to revive a right it waived in 2015 when the children were first placed with K.K.-M. or in August 2016 when DCP&P made its conclusive best interests determination or, at the latest May 2017, when it learned of K.K.-M.'s [Kinship Legal Guardian] status. Id. at p. 17–18. K.K.-M. also argues that denial of eligibility was "frivolous and completely unfounded in law" and requests damages and attorney fees. Id. at p.18–20.

The Board disputes that it intentionally waived its right to challenge A.W. and R.M.'s residency. (Board Opposition at 2.) The Board notes it challenged the children's residency "within months of receiving the kinship legal guardianship judgment and shortly after the District was informed of the effect of the kinship legal guardianship status on A.W. and R.M.'s school residence." Ibid. Thus, the Board argues "Petitioner cannot show that the District knew its 'rights and deliberately intended to relinquish them.'" Id. at 3; (citing In re Hess, 422 N.J. Super. 27, 37 (App. Div. 2011)). Further, the Board argues that "there is no prescribed time-limit in which a superintendent or chief school administrator must issue a preliminary determination of ineligibility." Ibid.

On the merits, the Board argues that, contrary to K.K.-M.'s position, A.W. and R.M. are no longer foster children. (Board Motion at 10.) Specifically, the Board argues that "[a]lthough R.M. and A.W. were in foster care when originally placed in K.K.-M.'s residence as a resource family home placement because DC&PP maintained placement and care responsibility, once K.K.-M. obtained [Kinship Legal

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or argument in the brief how this statute applies. The Board, however, addresses the law in its cross-motion brief. Essentially, the Board repeats its primary argument that A.W. and R.M. are no longer foster children and notes that the law "does not provide any personal entitlement" and only "dictates terms [for] the State . . . to receive federal [funding]." Board Mot., p. 12. K.K.-M. does not respond to the ESSA specific arguments and relies generally on a characterization of A.W. and R.M.'s continued status as foster children. For the reasons discussed below K.K.-M. is incorrect.

Guardianship], R.M. and A.W. exited foster care.” Id. at p. 11. To that end, the Board points to the New Jersey Department of Children and Families Policy Manual, which terminates foster care when “[t]he child enters a KLG placement or is adopted[,]” and non-regulatory guidance from the United States Department of Education, which clarifies that the Fostering Connections Act “no longer appl[ies] once a student has exited foster care[.]” Id. at p. 11–12; (Board Motion Exh. B at 11.)

Likewise, the Board argues that the New Jersey Education Stability Act, N.J.S.A. 30:4C-26 et seq., only applies to children in resource family homes where the Department of Children and Families retains responsibility “for the ‘care, custody, or guardianship’ of the child.” Id. at p. 13; (quoting N.J.S.A. 30:4C-26.1). The Board emphasizes that a Kinship Legal Guardian has the “same rights and responsibilities, with respect to the child, as a birth parent would have.” Id. at p. 14 (citing N.J.S.A. 3B:12A-4(a)(1)). Thus, because “[Kinship Legal Guardianship] is not a resource family home . . . [and] it is a legal, permanent relationship . . . the provisions of N.J.S.A. 30:4C-26b no longer apply.” Ibid. (emphasis removed).

As to sanctions, the Board takes the position that because all of its arguments rely on the plain language of the statutes cited “that ‘are warranted by existing law’ and cannot be considered frivolous under Rule 1:4-8.” (Board Opposition at 3) (emphasis in original). Thus, “there is absolutely no basis to award or grant sanctions . . . .” Ibid.

**A. The Board has not waived its rights to contest A.W. and R.M.’s residency**

Initially, as to waiver, the Board is correct that it has not waived its right to challenge residency. There is no indication in the record that the Board at any time expressly waived its right to contest A.W. and R.M.’s residency. “A party waiving a known right must do so clearly, unequivocally, and decisively.” Hess at 37 (citing Knorr v. Smeal, 178 N.J. 169, 177, (2003)). Although, “[t]he intent to waive need not be stated expressly, provided the circumstances clearly show that the party knew of the right and then abandoned it, either by design or indifference[,]” the circumstances here do not

establish that the Board knew of and then abandoned its rights regarding A.W. and R.M.'s residency.

Here, the Board brought its residency challenge as to A.W. and R.M. beginning roughly two months after K.K.-M. attained Kinship Legal Guardian status over the children. In all communications with K.K.-M., the Board consistently maintained that the children should disenroll from Gloucester and enroll in the district where K.K.-M. lives with A.W. and R.M. These circumstances do not in any way establish intentional waiver.

**B. A.W. and R.M. are no longer entitled to an education in the Gloucester City School District because they live with K.K.-M., their legal guardian, outside of Gloucester and are no longer foster children.**

In New Jersey, generally, public education is free to any person over five and under twenty years of age who is domiciled within the school district. N.J.S.A. 18A:38-1(a). Domicile usually refers to the domicile of the child's parent or guardian. N.J.A.C. 6A:22-3.1(a)(1). However, "[w]hen a student's parents or guardians are domiciled within different school districts and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year." N.J.A.C. 6A:22-3.1(a)(1)(i).

Further, another exception to this general principle is where a "person for whom the Division of Youth and Family Services in the Department of Children and Families is acting as guardian . . . is placed in the district by the division." N.J.S.A. 18A:38-1(e). Likewise, N.J.S.A. 30:4C-26(c) provides that a child placed in a resource family home "shall be entitled to the educational benefits of the district . . . provided, however, that the district of residence, as determined by the Commissioner of Education pursuant to law, shall be responsible for paying, as applicable, tuition and transportation costs for such child to the district in which he is placed."<sup>12</sup>

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<sup>12</sup> "[R]esource family home' means and includes private residences wherein any child in the care, custody, or guardianship of the Department of Children and Families may be placed by the department[.]" N.J.S.A. 30:4C-26.1.

The Fostering Connections Act, P.L. 110-351 (2008), requires states to create a “plan for ensuring the educational stability of [a] child while in foster care . . .” with assurances that child either remains in his or her current educational placement or, subject to the best interests of the child, is otherwise appropriately placed. 42 U.S.C. 675(1)(G).

Similarly, N.J.S.A. 30:4C-26b(a) provides that “[w]henver [DCP&P] places any child in a resource family home . . . there shall be a presumption that the child shall remain in the school currently attended by the child and the child shall remain in that school, pending a best interest determination[.]”<sup>13</sup> “[W]ithin five business days of placement in a resource family home, the division shall make [the best interest] determination[.]” N.J.S.A. 30:4C-26b(c). Further, “[a]t any time during placement in a resource family home, the division may reconsider the child’s school placement and make a new determination in accordance with subsection b. or c. and d. of this section, upon consideration of the best interest factors listed in subsection f. of this section.” N.J.S.A. 30:4C-26b(e)(2) (emphasis added).

However, “[t]he Division of Child Protection and Permanency may at any time discharge from its care, custody, or guardianship any child, if in the opinion of the division the best interests of the child will be promoted thereby.” N.J.S.A. 30:4C-28. The New Jersey Department of Children and Families Policy Manual also provides that “[a] child’s Title IV-E/FC eligibility continues until . . . [t]he child enters a [Kinship Legal Guardianship] placement or is adopted.” Eligibility Requirements for Title IV-E/FC, New Jersey Dept. of Children and Families Policies Manual, New Jersey Dept. of Children and Families (2013), available at [http://www.nj.gov/dcf/policy\\_manuals/CP-IV-F-1-100.pdf](http://www.nj.gov/dcf/policy_manuals/CP-IV-F-1-100.pdf), p. 5.

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<sup>13</sup> N.J.S.A. 30:4C-26b(b) provides for placement “in the school district in which the resource family home is located” where DCP&P determines remaining in the present school is not in the child’s best interest.

N.J.S.A. 30:4C-26b(f) lists the factors that DCP&P and the court “shall consider in making a best interest determination[.]”



N.J.S.A. 3B:12A-2 defines a Kinship Legal Guardian as “a caregiver who is willing to assume care of a child due to parental incapacity, with the intent to raise the child to adulthood, and who is appointed the kinship legal guardian of the child by the court[.]” “[K]inship legal guardianship . . . is intended to be permanent and self-sustaining[.]” N.J.S.A. 3B:12A-1(b). “[A] kinship legal guardian [has] the same rights, responsibilities and authority relating to the child as a birth parent, including, but not limited to: . . . arranging and consenting to educational plans for the child . . .” N.J.S.A. 3B:12A-4(a)(1). However, the birth parent retains “the authority to consent to the adoption of the child or a name change for the child[,] the obligation to pay child support[, and] the right to visitation or parenting time with the child, as determined by the court.” N.J.S.A. 3B:12A-4(a)(2) to (4).

Here, A.W. and R.M. are not entitled to a free education in Gloucester City School District because they live with K.K.-M., their Kinship Legal Guardian. A student’s right to attend school free of charge in a district derives from that student’s domicile together with a parent or legal guardian. Kinship Legal Guardian, as explicitly established by statute, is a permanent status on par in most regards with the rights and obligations of a parent. Therefore, once K.K.-M. attained Kinship Legal Guardian status her residence became A.W. and R.M.’s domicile for the purposes of school attendance.

K.K.-M. is incorrect that the best interest determination either persists or needs to be revised after DCP&P relinquishes custody over foster children. The DCP&P’s obligation to consider a student’s best interests in changing educational placement occurs only “during placement in a resource family home . . .” N.J.S.A. 30:4C-26b(e)(2). A resource family home is one where DCP&P retains “care, custody, or guardianship” over the children placed there. N.J.S.A. 30:4C-26.1. DCP&P terminated its guardianship over A.W. and R.M. when K.K.-M. was appointed as Kinship Legal Guardian by the New Jersey Superior Court. Therefore, the best interest determination need not be revised by DCP&P before A.W. and R.M. can be removed from Gloucester City.

**C. Sanctions are not appropriate because the Board’s legal arguments are not frivolous.**

ALJs may impose sanctions for “unreasonable failure to comply with any order of a judge or with any requirements of [N.J.A.C. 1:1-1 et seq.]” N.J.A.C. 1:1-14.14. There is no provision within the administrative code which specifically addresses sanctions for frivolous claims. However, “[i]n the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes.” N.J.A.C. 1:1-1.3. Rule 1:4-8 provides for sanctions based on the implied certification by a filing attorney that “the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law[.]” R. 1:4-8(a)(2).

Here, as discussed above, the Board has correctly argued that once a child exits foster care, the child’s district of residence is determined by the parent, adoptive parent or guardian’s domicile, whoever has custody of the child. Therefore, the Board has not violated R. 1:4-8(a)(2) and K.K.-M.’s motion for sanctions is **DENIED**.

**CONCLUSION**

For the foregoing reasons, I **CONCLUDE** that the Board’s cross motion for summary decision is **GRANTED** and K.K.-M.’s amended motion for summary decision is **DENIED**.

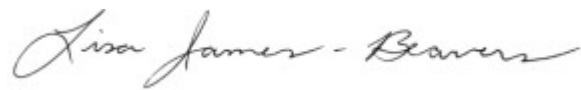
As the granting of the Board’s cross motion for summary decision is an initial decision based on their being no facts in dispute, the hearing scheduled for September 11, 2018, is canceled.

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

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

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

August 28, 2018  
DATE

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**LISA JAMES-BEAVERS**  
Acting Director and Chief  
Administrative Law Judge

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

/caa