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State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION

A.T. AND L.T. ON BEHALF OF A.T., Petitioners, v. **NORTH HUNTERDON-VOORHEES REGIONAL BOARD OF EDUCATION,** Respondent,	OAL DKT. NO. EDS 10161-13 AGENCY DKT. NO. 2013 19846
and **NORTH HUNTERDON-VOORHEES REGIONAL BOARD OF EDUCATION,** Petitioner, v. **A.T. AND L.T. ON BEHALF OF A.T.,** Respondents.	OAL DKT. NO. EDS 10159-13[1] AGENCY DKT. NO. 2014 20087

Ira M. Fingles, Esq., appearing for A.T. and L.T. (Hinkle, Fingles & Prior, P.C., attorneys)

Rita Barone, Esq., appearing for North Hunterdon-Voorhees Regional Board of Education (Purcell, Mulcahy, Hawkins, Flanagan & Lawless, LLC, attorneys)

[1] Both parties agree that this matter should properly have been filed under an EDU docket number, and not as an EDS, as it concerns tuition reimbursement and not special education.

Record Closed: December 5, 2014 Decided: January 14, 2015

BEFORE **SUSAN M. SCAROLA**, ALJ:

STATEMENT OF THE CASE

Petitioners, A.E.T. and L.T. (collectively, "the parents"), the parents of the special-needs child A.M.T., appeal the determination of the North Hunterdon-Voorhees Regional Board of Education ("district") that A.M.T. has not resided within the district since 2009. They seek to invoke the stay-put provisions for the child's placement at Matheny Medical and Educational Center ("Matheny") pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. § 1400 et seq., or Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C.A. § 794a. The district seeks full tuition reimbursement from the parents in the amount of $277,410 for all periods of ineligible attendance of the child at Matheny.

PROCEDURAL HISTORY

On or about June 11, 2013, A.E.T. and L.T. filed to invoke the stay-put provisions for the child's placement at Matheny. An answer was filed by the district on July 24, 2013. On July 25, 2013, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case and filed under OAL docket number **EDS 10161-13**. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On or about July 22, 2013, the district filed a counter-claim against A.E.T. and L.T. for reimbursement of tuition paid to Matheny for all periods of ineligible attendance. On July 25, 2013, the matter was transmitted to the OAL for determination as a contested case and filed under OAL docket number **EDS 10159-13**. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.[2]

[2] This matter appears to have been inappropriately labeled as a special education matter because it does not concern special education, but rather residency, upon which the special education services were based.

On or about June 11, 2013, A.E.T. and L.T. filed an appeal of the district's determination that the child was not entitled to special education services at Matheny because of its determination that he was no longer a resident of the state. An answer and counter-claim were filed by the district on July 24, 2013. On July 25, 2013, the matter was transmitted to the OAL for determination as a contested case under OAL Docket Number **EDU 10201-13**. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.[3]

Prior to the hearing, the district moved for summary decision on **EDS 10161-13**, contending that all issues were within the jurisdiction of the Commissioner of the Department of Education because they related to the child's residency, and did not involve IDEA or Section 504. A.E.T. and L.T. contended that the child's disabilities entitled him to a free and appropriate public education at Matheny paid for by the district for as long as he remained a resident of that district, and to that extent the IDEA and Section 504 were implicated in this matter. The district's motion for summary decision was denied on March 12, 2014.

The hearing in this matter was held on May 19, August 7, and November 12, 2014. Briefs were submitted and the record closed on December 5, 2014. This is the decision in the special education matter, which follows from the decision on the residency matter.

FACTUAL DISCUSSION

It is not disputed that the child A.M.T. has been diagnosed with cerebral palsy, spastic quadriplegia, severe cognitive impairments, a seizure disorder, and cortical blindness. His disabilities interfere with his learning and he has been classified as eligible to receive special education and related services pursuant to the IDEA. Due to the severity of his needs, the child was placed at Matheny by the district in 2004 and he has remained there since. A.M.T. reached the age of twenty-one in 2014 and now receives services through the Department of Developmental Disabilities (DDD).

[3] Although these matters shall be consolidated for purposes of the hearing, two decisions will be rendered on the EDS and EDU matters, as the former are final decisions while the latter are not.

Testimony

A.E.T. testified that he has three children, A.M.T, Li.T. and N.T. A.M.T. is his and his wife's natural son; Li.T. and N.T. are adopted. A.M.T. has attended Matheny (located in Peapack, New Jersey) since his placement there; the residential component of his placement is paid by New Jersey Medicaid.

A.E.T. is a softwear consultant who does program management. He has been an independent contractor in this field since 1996. It is typical for him to be employed on a project for a company for approximately three to four years, although some projects may take less time.

A.E.T. has lived in three places in his professional life: he lived in Maryland until 1995; in St. Louis until 2001; and in New Jersey from 2001 to the present. He was typically on the road five days a week, and the family stayed at home. While living in St. Louis, he was working in Dallas, Detroit, Toronto, Montreal, and California. He worked for Booz-Allen and commuted from Puerto Rico to Maryland every other week. After he moved to New Jersey, he worked for KPMG in Liberty Corner; then for Canon Long Island, and then for the Icahn group in New York City and later northern Virginia.

A.E.T. came to New Jersey on a project for Canon for a couple of years; he then went to Icahn for four years. In 2008, the economy was not very good and his old boss at Canon became chief executive officer of Canon Europe. A.E.T. went in as a temporary contract employee with the job of reorganizing, fixing sales, and reducing the cost of information technology. This position required him to go to the Netherlands, and ended after the program accomplished its objectives and his old boss retired.

A.E.T. asked Canon for a three-year commitment for this program because he knew his boss was going to retire, and the program would not last forever. A.E.T. had no intention of permanently living there. He had a work visa which expired at the end of March 2014, although the work was essentially concluded in August 2013. Canon paid for their housing in the Netherlands and for the cost of their return. He moved there for

his employment and then moved back when the program ended. These programs do not last forever and he was working for a specific person, who retired.

A.E.T. tried to commute from the Netherlands once a month, and his wife, L.T., tried to come back once a month. L.T. went to the Netherlands in 2009 after she retired from work in 2008. Their son, N.T., went to the Valley Forge Military Academy for his senior year of high school, and then to the Netherlands for approximately one year. N.T. is now working in California.

A.E.T.'s daughter, Li.T., also had an individualized education program (IEP). She ended up attending the Netherlands American School in The Hague, but without an IEP. She went to college for a year and is now attending Raritan Valley Community College.

A.E.T. and his wife could not leave two seventeen-year-olds in New Jersey alone, since they needed a stable environment.

A.E.T. never applied for Dutch citizenship. They all had visas related to his work. His wife's visa had to be renewed every year, as the Dutch were very strict with spouses. All visas were terminated when his job ended. A.E.T. could not remain in the Netherlands after that if he were not employed. A.E.T.'s official time at Canon ended in August 2013. A.E.T. and his wife had temporary residents' cards in the Netherlands. He would not even have been eligible for permanent status until after he was there for five years and had passed a test on Dutch, which he does not know. They could not have stayed there permanently and had no intention of doing so. They never abandoned or gave up their New Jersey domicile.

A.E.T. and L.T. never hid where they were living from the district. He had contact with A.M.T.'s case manager and Matheny personnel, who also met with his wife periodically when she came back. No one ever expressed concern to them about their residency. The first time anyone raised an issue about residency was in March 2013. They did communicate with their case manager when they rented their apartment in Lebanon. They are very attached to A.M.T. and see him often.

A.E.T. and L.T. originally lived at 6 Floral Mountain Way, Tewksbury, a house they owned. In the fall of 2010 they put it on the market, as it was a big house on a big lot and cost a lot to maintain. They rented a two-bedroom apartment in Lebanon before the house was sold, and advised A.M.T.'s case manager because they wanted to keep her informed. The apartment was furnished with their personal belongings. It had two bedrooms, and was about 1,200 square feet. Their daughter lived there with them, as she continues to do now. They had a storage unit for the overflow of personal possessions from the house, which was finally sold in May 2011.

A Notice of Ineligibility was sent to A.E.T. and his wife, to which A.E.T. responded:

1. He agreed that A.M.T. was a classified student eligible for special education.

2. He agreed that he and his wife were his legal guardians.

3. They always communicated with the DiBrango and Matheny.

4. Although Publicover said she called the number and was told it was not in use, the number was and is active and is still in use.

5. L.T. worked for the school district until she retired and that information was public record.

6. The business number allegedly tried by Publicover was not provided, so he could not know where she was calling.

7. The fax number allegedly tried by Publicover was not provided, so he could not know where she was faxing.

8. The emergency number given to the school was the number of A.M.T.'s grandmother, who lived in Virginia and was the person to contact if A.M.T. had an emergency. They could not give that responsibility to anyone else in the district because they did not know anyone that well.

9. The district knew that Li.T. had gone to the Netherlands and that A.M.T. could not possibly be living with her, since he lived at Matheny. A.M.T. is medically fragile and it takes years to get him settled. A.M.T. has been at Matheny since 2001 and has never moved out.

10. The case manager had all the numbers for A.E.T. and L.T. in both New Jersey and in the Netherlands, because L.T. wrote the contact information down for them. The case manager told L.T. to provide the information to the school district's data person so it could be noted, which she did.

A.E.T and his wife always continued to pay federal and New Jersey state income taxes and property taxes. They continued to pay New Jersey taxes in 2009, 2010, 2011, and 2012, even though their accountant advised that payment was optional. They felt they did everything as if they lived here 100 percent of the time.

They used the UPS store as a mailing address, as it was a safe and secure way to get important mail. Their driver's licenses listed their New Jersey mailing address (which was the UPS store) because the Division of Motor Vehicles selected that address after being advised of both the residential address and the mailing address. Their voter identification cards listed their district address since 2001. Their automobiles were registered and insured in New Jersey. Their handicapped-equipped van was registered and insured in New Jersey for as long as they owned it. They were not hiding anything.

They renewed A.M.T.'s handicapped placard with the State of New Jersey in January 2012 while they were away. They gave up their handicapped-equipped van shortly thereafter, as it had almost 200,000 miles on it and broke down. They had receipts for van repairs from 2009 to 2011 which showed its usage. They had receipts

and credit-card bills showing car and van rental receipts, and credit-card bills for rental-van usage after their own van was no longer serviceable. Their other cars were leased and were disposed of when they went to live in the Netherlands, as one lease had ended and one was terminated early. Their apartment in the district had cable and internet service, and all utility bills showed usage and activity from the start of lease until now. They ordered merchandise using that address.

L.T. spent more time in New Jersey than he did because his time off from work was more limited. In 2009, her time here was approximately 44 percent; in 2010, 27 percent; in 2011, 21 percent; in 2012, 30 percent; and in 2013, 30 percent.

After he received the letter from Publicover in March 2013, A.E.T. responded. On March 27, 2013, he contacted Publicover, and advised her that he would put documents together. He definitely called her in March.

A.E.T. received a letter on April 10, 2013, and disagreed with the second paragraph and the notice of ineligibility. He and his wife provided the requested documents on April 14, 2013. He and his wife thought of Tewksbury and Lebanon as their home. Both municipalities are in the North Hunterdon-Voorhees regional high school district. A.E.T. believed the district was confusing physical presence with domicile. He was never told what was wrong with or missing from any documents he provided. He was not available for a meeting until his return from the Netherlands. He heard that the Board decided the issue without him being there to present his case.

In July 2013, A.E.T. and L.T. returned to New Jersey. They did not maintain a residence in the Netherlands after his return. They remained living in the same apartment complex in Lebanon, but had to move from one apartment to another because they had brought a dog back with them from the Netherlands.

As for their other children, N.T. went to Valley Forge Military Academy (VFMA). Prior to that he had been suspended from Voorhees; he did not have an IEP or a 504 plan, just behavioral issues. After he graduated from VFMA, he joined them in the Netherlands for one year. He is not likely to ever live with them again, as he needs

space. Li.T. was a sophomore in 2008–2009. She could not have stayed alone in the United States, and even today she continues to live with them. Li.T. went to college for one year in the Netherlands, and now attends college here. Holidays were spent in a variety of places. Many times Christmas was spent here, as they were able to fly in and out of Washington, D.C., at a cheaper fare.

Canon paid for their living expenses in the Netherlands for so long as he was working for that company. Canon did not offer to purchase them a home in the Netherlands. Their house and their apartment here were never rented or subleased. The house was sold in 2011 at a short sale for less than the amount of the outstanding mortgage. They started renting the apartment in 2010, and stopped paying the mortgage shortly thereafter so the short sale could be accomplished.

The district contended that there were problems with telephone contact, but the district had used a permanent landline which was not used. The other number was L.T.'s American cell phone which was a working number.

The accounting firm KPMG did their Dutch and American taxes. The tax returns would have listed their mailing address as the UPS box, as this was a secure way to receive his mail. They rented the box around the time they rented the apartment in 2009.

He did not return to the United States immediately once his position ended because it would have caused income and medical-insurance coverage to cease; to receive his salary and benefits, he had to remain overseas until the contract ended. So he and L.T. stayed in the Netherlands and traveled to Russia, Helsinki, and Normandy. When he was offered the opportunity to attend the Board hearing in May, he asked if it could be rescheduled closer to his returning in August because he and his wife had made travel plans months before to spend May in St. Petersburg, Russia.

The JCP&L documents showed their energy use. In April 2014 letters of guardianship were filed for A.M.T. in Somerset County Superior Court because A.M.T.

continues to reside at Matheny in Somerset County. They prepared a trust for A.M.T. in Hunterdon County, which is where they resided.

L.T. is A.M.T.'s mother. L.T. testified that A.M.T. has disabilities: cerebral palsy, visual impairments, swallowing difficulties, and an anxiety disorder. He cannot walk and is wheelchair bound. He has a specially built wheelchair that weighs eighty to one hundred pounds and does not collapse. It is manual and has to be pushed. He cannot speak but can make sounds. He has a VMAX device which helps him make choices by voice. There is a time lag, and people get tired of waiting for his speech. He cannot read, do math or write. He is not able to toilet himself. He wears diapers and needs two personal care attendants to put him into bed to change him. He needs help bathing and with his personal care. He is non-functional with his hands.

A.M.T. has had other medical problems. He needed surgery to correct crossed eyes. Both his hips were re-built surgically and he has had surgery on his feet. He requires a gastric tube for feeding and hydrating. He had a spinal fusion about a year ago because his scoliosis was affecting his breathing. He takes seizure medications and wears glasses.

When they first moved to Tewksbury in 2001, A.M.T. went to the Sawmill School, then to another school. He could not be included in the classes. He went to the Lakeview School, a day school, in Edison, for one and a half years, but the one-hour commute was difficult for him. Matheny was a place for education, therapy and socialization. At the Matheny School, A.M.T. receives physical therapy, occupational therapy, speech, music, recreation, and social activities. It is a teaching facility with general pediatric care and experts in all fields. It has a wheelchair clinic and splinting clinics. The district never voiced any objection to the Matheny School as his appropriate placement.

A.E.T. received the job offer from Canon in the Netherlands in April 2009. L.T. thought it would be a three- to five-year commitment. This would not be the first time her husband had worked so far from home. L.T. went over in April to explore, and moved there in July 2009. Their other two children were still in high school. Li.T. was a

minor so they could not leave her at home. Li.T. and N.T. went for a visit, but N.T. attended high school at VFMA. A.M.T. did not go to the Netherlands. It takes A.M.T. a long time to get situated and to get to know the program. Netherlands has no Disabilities Act. Dutch is the language spoken in the Netherlands, and A.M.T. speaks English. There are only three such schools in the Netherlands, and two of them would not even accept Li.T., who had only an IEP.

In terms of prior assignments, this was the first time she moved to be with her husband, as typically he would go on assignment within the United States and A.E.T. would commute. One time her husband was working in Canada or Puerto Rico, and she stayed behind in Maryland. In 1998 her husband commuted between Montreal and St. Louis. Canon paid for the shipment of some personal belongings to the Netherlands, but they had to place the rest of their belongings in storage here since they downsized from the house to the apartment and not everything fit.

A.M.T.'s case manager, Shirley DiBrango, was L.T.'s contact person at the school. (L.T. still receives school alerts on her cell phone, which is the phone number she provided to the district.) The school was aware of where they were. When they lived in Tewksbury, they visited A.M.T. about three to four times a week. L.T. travelled back and forth from the Netherlands to see him. The case manager took care of A.M.T. with his IEP, etc. She and the case manager emailed and phoned each other; they would have IEP meetings; they were in contact from the time they moved. DiBrango never raised an issue about their residency. L.T. and A.E.T. never tried to hide where they were living. She included all their addresses and phone numbers so the school could reach her in an emergency. She has had a good relationship with the district and Matheny. Matheny knew she was traveling.

Their house had been located in Tewksbury, but their post office box was in Califon. In November 2010 they rented their apartment in Lebanon, which was within the school district, and they advised the district of their new address. Their house was on the market in the fall of 2010 (and sold in May 2011). When they moved to the Netherlands, Li.T. went to school there and rarely traveled to the U.S. The apartment in Lebanon was big enough for them, as N.T. was a senior at VFMA and lived there. He

did not stay at the apartment, but would go with his friends. He never came back to live at home, and now lives in San Francisco. He is an interesting, but difficult, child: he was suspended from the district high school; he thrived in a structured environment like VFMA; he likes to call his own shots. So he took off for California.

L.T. was the one who travelled the most between the Netherlands and New Jersey. She reviewed her airline tickets, and confirmed her husband's testimony about the percentage of her time spent in New Jersey each year from 2009 (44 percent, 27 percent, 21 percent, 30 percent, and 30 percent). Her husband could not get home as often as he would have liked.

L.T. said it was hard to be away. She missed her son and saw him as often as she could. She is his advocate.[4] Sometimes A.M.T. is sick. She goes to educate him, to entertain him, to keep him company. The caregivers are not "Mom." He needs appropriate clothing; she likes him to be well-dressed. She looks at his wheelchair to be sure it is not "out of whack." She stayed at the Lebanon apartment whenever she was visiting him. L.T. used their handicapped-equipped van for transportation until January 2012, when it broke down; then she used a rental car or van.

L.T.'s mother and father live in Virginia. They are attached to A.M.T. and visit him, too. She did not remember staying overnight in Virginia, as Virginia was not her home.

On August 27, 2010, L.T. received an email from DiBrango that A.M.T. was eligible for his triennial evaluation. L.T. was willing to waive it and signed the waiver form. She sent it back in August 2010 when she was in the Netherlands. She and her husband always attended the IEP meetings, which they continued to do after they went to the Netherlands. They did one meeting by phone, and one by FaceTime, and twice she was in New Jersey for the meeting.

[4] L.T. became emotional as she discussed her son and her love for him.

At some point, the district challenged their residency. A couple of memos said something about terminating the placement. A letter dated April 10, 2013, stated that if there were no proof of residency, then A.M.T.'s enrollment would be terminated. Matheny became concerned when she advised them of the letter that his out-of-district placement might be effected. A.M.T. remained eligible for services from the New Jersey Commission for the Blind, the DDD and Medicaid.

L.T. and A.E.T. could not have made a permanent home in the Netherlands, as A.E.T. was an A-1 visa worker with specific knowledge and she was his spouse. His visa was good for a one- to two-year period and could be renewed; hers was good only for one year and could be renewed only if her husband continued to be employed with his visa. They never formed an intention to live there. They never intended to give up their domicile within the district. They did not immediately return to the United States after her husband's work ended, but he was still getting paid. It was a great opportunity for them to take an extended vacation and to travel within Europe before returning home.

L.T.'s driver's license showed her district address and was not changed to the Netherlands; she voted in elections in New Jersey by absentee ballot in 2010, 2011, and 2012. She and her husband paid their federal and state New Jersey taxes in 2010, 2011, 2012, and 2013 with a district address.

L.T. was aware that there was a registration process at the school. She believed she told the registrar of her contact information, but was sure she had told DiBrango, as she was the person with whom she had the most contact. L.T. wanted to be sure all her contact information was correct and wanted it on the cover of the IEP. DiBrango said to go to the registrar. When she disenrolled Li.T., she spoke with a guidance counselor, not the registrar. The IEP cover sheet had handwritten information provided by her, but some of it was not her handwriting.

The lease renewal was presented effective July 7, 2012, but was not executed until October 1, 2012. At that time the lease was effectively renewed for twenty months and it expired at the end of June 2014.

Mary Patricia Publicover is the director of special services at the North Hunterdon-Voorhees Regional High School District, where she has worked since 1986. From 2004 through October 2012 she was the supervisor of the Special Education Department. She was responsible for running compliance reports, which are required to insure that IEP meetings are held and IEPs finalized. A compliance run was done at the end of November 2012, and in January 2013.

A.M.T.'s IEP came up, as it was due in the middle of January 2013 and was lapsing, and the district's policy was never to have one lapse. She went to the case manager and asked for her to complete it within one week. The case manager said it was not possible because the parents were not in New Jersey. Publicover found out that the mailing address they had given the district was a UPS store and that the house had been sold. She called cell and work numbers and received no response, and the emergency contact number was in Virginia.

Publicover called all the numbers in the database system and received no reply; she left messages that "[j]ust said contact me about a student in North Hunterdon-Voorhees Regional High School." She did not call the home landline more than once. On March 11, 2013, a notice of initial determination on ineligibility was prepared. She spoke with the case manager after the letter was written and asked for the student's file.

The front page of the IEP was where she found the information on the parents; other information was in the case manager's personal file. Publicover called L.T.'s old work number and found out she was no longer working there.

Publicover spoke with DiBrago about residency; she was told the parents rented an apartment in Lebanon and that they communicated by email. Publicover said the officials have to be notified. On or about March 23, 2013, she received a phone call from A.E.T. and they spoke about the ineligibility letter, including domicile and residency. A.E.T. understood and said he would provide information about both and that he was returning at the end of the summer 2013.

A.E.T. had to provide information to be reviewed by the Board, and he and his wife would have the opportunity to appear before the Board. Publicover received email correspondence which indicated that A.E.T. and his wife were gathering information, and then she received a package of information from them. The Board reviewed the information presented and said that enrollment was in question.

Publicover asked for the emails between the parents and the case manager. The email threads showed that L.T. attended some IEP meetings in person, but some were by conducted by phone or Skype. The State requires attendance by phone call or in person. She noted two addresses on the file: one in the United States and one in the Netherlands.

The Board considered the documentation presented at a meeting held on May 14, 2013. The parents were told they could come to the meeting, but they wanted to postpone it to August 2013 after their return to the United States.

Publicover handled this matter, as it came under special education out-of-district students. Publicover agreed that A.M.T. is well served at Matheny; the district inherited that placement and maintained it. This is the second such case she has handled. In the first case, the principal wrote the letters to the parents. Here, the principal had no correspondence with the parents.

Publicover noted that the parents had an address in-district from 2011. She saw the UPS-store address and the apartment-complex address commencing in November 2010 and did not dispute that. Nor did Publicover dispute the lease or its renewal or that the parents had a house or an apartment in the district at all times in dispute. The district did not believe that any of the documents were falsified or that the information was factually incorrect.

Intent is a factor in domicile, but it was not her decision to make. She just presented the information she had to the Board, but without reaching any conclusion as to whether the parents intended to return. There was nothing that she could point to that would indicate that the parents did not intend to return.

The parents did return in 2013 and moved to a different apartment in the same complex with a new lease, because they needed a different unit in order to keep their dog.

The parents needed to demonstrate they were living within the district with leases and utility bills. This was used for the 2013–14 school year and showed movement in the apartment and utility bills. The parents had the house until May 2011, when it was sold. They had started to rent an apartment in 2009, and maintained the lease at least until 2014. Documents for 2013–2014 showed that services were continued to the family.

Publicover did not know at what point the district contended that the parents abandoned their domicile in New Jersey. The district looked at when the two other children left New Jersey, and the district may have considered that as when domicile was abandoned, which may have been November 2009. She thought the family's domicile in New Jersey was sketchy.

After A.E.T.'s assignment ended and he was no longer working, she wondered why they waited to return. She later saw the parents in New Jersey during conferences and meetings and knew they had returned and had moved to a different apartment in the same complex. She saw the letter from Canon and knew that A.E.T. was released from his employment early in 2013, but was paid through August 2013, when his employment officially concluded. A.E.T. had a right to continued housing and benefits during this period, when he and his wife traveled in Europe.

Findings

In order to resolve the inconsistencies, the credibility of the witnesses must be determined. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F. 2d 718 (9th Cir. 1963). Additionally, the witness' interest in the outcome, motive or bias should be considered.

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).

I accept the testimony of A.E.T. and L.T. as fact, as indeed the district did not contest or dispute the validity of the leases or the physical evidence presented by the parents, or that the parents presented a valid address within the regional high school district. The district did not contend that any of the documents presented by the parents was falsified or that the information was factually incorrect. Rather, the district focused on the intent of the parents to give up their New Jersey domicile when they moved to the Netherlands while A.E.T. was employed there, questioning why a UPS store was used as the mailing address, and the parents' alleged failure to advise the registrar of the address change until 2013. The district was also concerned that there was no response to telephone calls to L.T. and A.E.T., but the calls were placed only once, and the case manager remained in constant contact with L.T. by email.

I **FIND** that the parents did use a UPS mailing address for safety and convenience to insure that their mail was safely delivered in their absence. I also **FIND** that L.T. at all times had provided complete information to the district concerning her whereabouts and the best way to contact her. L.T. notified those whom she thought needed to be notified of the change, including the case manager and the guidance counselor, when she removed her daughter from the school. She immediately notified the registrar in 2013 after she was told to do so. Nothing was withheld from the district about the parents' addresses.

I **FIND** that the business opportunity to work in the Netherlands was temporary and required a special visa for A.E.T. and L.T. which permitted them to reside in the Netherlands, but not to become permanent residents. The parents did not purchase a residence in the Netherlands; rather, their housing expense was paid by Canon as an employment benefit. The parents left their furniture and other personal possessions in New Jersey, and shipped personal items to be used during their stay in the

Netherlands. I also **FIND** that the parents intended to return to New Jersey and the district when A.E.T.'s work position was terminated, as indeed they did. I do not find the termination date of the lease significant, because the lease was executed approximately four months after the renewal date of July 1, 2012, and so was renewed for a twenty-month term, rather than the twenty-four set forth in the preamble.

I also **FIND** that the Division of Motor Vehicles was advised of both the home address and the mailing address of the parents, and determined to use the mailing address on the drivers' licenses. The parents filed their taxes in New Jersey even though it was optional, and voted in the district. L.T. was frequently in this state and remained in the apartment when she came to visit her son. A.E.T. visited as he was able, given his work responsibilities.

I **FIND** that the parents owned a home located in Tewksbury (a Califon mailing address) until it was sold in May 2011. In November 2010 they rented a two-bedroom apartment in Lebanon, which also was within the district. I also **FIND** that this apartment was of sufficient size for the parents and their daughter, who lived with her parents and returned to Lebanon when they did. There was no need for a larger apartment given that the parties' other child lived at a residential high school on a full-time basis and never returned home after he graduated. They moved to a different apartment within the same complex upon their return from the Netherlands in order to accommodate a dog they had acquired.

I also **FIND** that the decision to travel in Europe for a few months after A.E.T.'s job concluded was not unreasonable given the circumstances, and had been planned months before the domicile issue arose in the spring of 2013.

LEGAL ANALYSIS AND CONCLUSION

The issue in this matter is whether A.M.T. was entitled to be enrolled in the district for purposes of receiving a thorough and efficient public education under N.J.S.A. 18A:38-1(a), 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, in order for a student to receive a free education).[5]

A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district. N.J.A.C. 6A:22-3.1(a)(1). The parent/petitioner has the burden of proving domicile by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)(2).

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, 374–76 (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, 119 S. Ct. 1357, 143 L. Ed.2d 518 (1999). 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).

Where a person has more than one residence, the following factors are useful in determining his domicile: the physical characteristics of each place, the time spent and the things done in each place, the other persons found there, the person's mental attitude towards each place, and whether there is or is not an intention, when absent, to return. Mercadante v. City of Paterson, 111 N.J. Super. 35, 39–40 (Ch. Div. 1970), aff'd, 58 N.J. 112 (1971). "[A] choice of domicile by a person, irrespective of his motive, will be honored by the court, provided there are sufficient objective indicia, by way of proofs, supporting the actual existence of that domicile." In re Unanue, supra, 255 N.J. Super. at 376). "[D]omicile is 'very much a matter of the mind—of intention.' 'Where there are multiple residences . . . domicile is that place which the subject regards as his true and permanent home.'" Ibid. (citations omitted). The acts, statements and conduct

[5] A student may attend school in a district in which he is a non-resident, with or without payment of tuition, at the discretion of the school district. N.J.S.A. 18A:38-3(a); N.J.A.C. 6A:22-2.2.

of the individual, as viewed in light of all circumstances, determine a person's true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959).

Furthermore, when a man has acquired a domicile in a particular place, that place remains his domicile until he acquires another domicile. In re Unanue, supra, 255 N.J. Super. at 376 (citation omitted). In considering whether a change of domicile has occurred three elements must be considered: whether there had been an actual and physical taking up of an abode in a particular state; whether the subject had an intention to make his home there permanently or at least indefinitely; and whether the subject had an intention to abandon his old domicile. "The court must evaluate all of the facts of the case to determine the place in which there is the necessary concurrence of physical presence and an intention to make that place one's home." Ibid.

"In accordance with this principle [of one domicile] it has been held that one does not relinquish his domicile by having another residence based on reasons of health, society, **business** or employment." Id. at 375 (emphasis supplied). "New Jersey courts also consistently hold that once established, a domicile continues until superseded by a new domicile. Accordingly, once one party in a domicile contest establishes firmly that the subject was domiciled in a particular location at a particular time, if the adverse party seeks to establish that the subject was ultimately domiciled in some different location, he must demonstrate . . . that the subject did in fact effect a change of domicile." Id. at 377 (citations omitted).

The district relies on Board of Education of Hunterdon Central v. E.F. and G.F., EDU 6053-01, Comm'r Decision (August 4, 2004), <http://njlaw.rutgers.edu/collections/oal/>, in support of its position that the parents were not domiciled within the district. In that matter, the petitioners had not sold their Branchburg home, they admitted that the purpose of their Flemington apartment was to have their children finish high school in the district, and they had actually returned to Branchburg after their youngest child graduated. The Commissioner found that the petitioners satisfied the first element set forth in Lyon v. Glaser, supra, 60 N.J. at 264, when they took up residency within Flemington, but failed to satisfy the second two

elements, that of demonstrating an intent to make the residence a permanent or at least an indefinite home, or of demonstrating an intent to abandon the old domicile.

That case can be distinguished and in fact supports the conclusion that A.E.T. and L.T. remained domiciled within the district, as not only did A.E.T. and L.T. spend significant time in Lebanon, they had no plans to stay permanently or even indefinitely in the Netherlands, and, moreover, they had already established a domicile within the district and never gave it up. This is unlike the petitioners in E.F. and G.F., who purposely rented an apartment in another school district to establish residency; here, the parents had already established domicile within the district and there was no demonstrable intent to abandon it, or set up a permanent domicile elsewhere.

The district also cites Samuelsson v. N.J. Division of Taxation, 22 N.J. Tax 243 (May 2005), in which the tax court concluded that the Samuelssons had in fact relocated to Florida and had established a domicile there. The Samuelssons had moved all their furniture to Florida; listed their New Jersey home for sale; enrolled their children in Florida schools; closed their New Jersey bank accounts and opened others in Florida; and obtained Florida driver's licenses. The testimony also indicated that the Samuelssons intended to abandon their New Jersey domicile and decided to return to New Jersey only when things did not work out in Florida. This is substantially different from A.E.T. and L.T., who maintained their district domicile even after their home sold, maintained their driver's licenses and their voter registration in New Jersey, and never intended, nor could they intend, to make the Netherlands their new domicile. Their old domicile was never abandoned as it must be to establish a new domicile. The fact that their daughter attended school in the Netherlands does not lead to the conclusion that district domicile was abandoned by her parents. In fact, after the parents returned to New Jersey, Li.T. continued her education at the county college.

In this matter, the district contends that the parents were no longer domiciled within the district and, therefore, A.M.T. was not entitled to a free and appropriate public education paid for by the district. However, the district did not point to any specific date as to when domicile within the district was abandoned. Was it in 2009, when A.E.T. accepted employment in the Netherlands; was it when his wife left New Jersey to join

him; was it when their house was sold in 2011; was it when they rented an apartment in 2010 and used a separate box to obtain their mail?

The first issue to be addressed is whether the parents had in fact established a domicile in New Jersey within the district. There is no doubt that they had. They purchased their home in Tewksbury and lived there for many years. The children attended school within the district; the parents paid taxes, voted, and registered their vehicles in Tewksbury. They owned their home until 2011 and never rented it out. Just prior to the sale of the home, the parents rented a two-bedroom apartment in Lebanon which was sufficiently large to accommodate the parents and their daughter.[6] There was no need for a room for A.M.T., as he was not able to live at home, although he would be continued a resident of the household as the child of his parents, and N.T. lived elsewhere.

The parents continued to maintain their driver's licenses and voting registration within the district. For as long as they owned a vehicle, it was registered in New Jersey. Official government correspondence was addressed to them at their address within the district. They paid their taxes with a district address. The fact that they used a UPS store to secure their mail is not significant, as the use of a post office box to receive mail is not an indication that domicile has been abandoned.

The parents acted as if they lived within the district. They continued to pay significant New Jersey taxes. L.T. returned frequently to the apartment and visited her son. The time spent there ranged from 44 percent in 2009 to 30 percent in 2013.[7] The apartment showed utility use; the credit cards and other bills showed ongoing activity within the district.

Most importantly, the intention of the parents to return to the district and New Jersey was obvious. The job in the Netherlands was temporary; indeed, it could only be temporary. It was not an indefinite position either; it was expected to end and did end

[6] Lebanon and Tewksbury are both within the North Hunterdon-Voorhees Regional School District.
[7] On average, L.T. was in the apartment more than 30 percent of the time, which is significant considering the distance.

once the program was completed and A.E.T.'s supervisor retired as planned. A.E.T. and L.T. could not become permanent residents of the Netherlands: they were there on temporary visas issued to A.E.T. for his work and to L.T. as a spouse. Neither one spoke Dutch nor had an intention to remain in that country after the job was finished. And, indeed, once the job was concluded they returned to their apartment, where they remained for another year.

In applying the test set forth in In re Unanue, the parents did have two residences, one within the district and one in the Netherlands. Each place was capable of maintaining the family members who then resided in the household. While more time may have been spent in the Netherlands, nevertheless, L.T. spent a considerable amount of time in New Jersey. Their daughter Li.T. went to school in the Netherlands because she was underage and could not be left alone, unlike her brother N.T., who attended a residential high school in the United States. The mental attitude of both A.E.T. and L.T. was convincing: each thought of their Lebanon residence as home, the place they had left temporarily for business reasons and the place to which they would return. They were quite explicit that they never intended to take up permanent residence elsewhere. And, indeed, they returned to the apartment when A.E.T.'s contract was concluded.

If the parents were not domiciled within the district, then where were they domiciled? No evidence was presented that the parents had taken up another domicile, whether in the Netherlands or elsewhere. The parents could not live permanently in the Netherlands on their temporary work-related visas. While they may have physically resided in the Netherlands, they never formed an intention to remain there permanently or even indefinitely, as they planned to return to New Jersey once A.E.T.'s job was concluded. Indeed they did return. No evidence indicated that A.E.T, and his wife ever intended to abandon their established domicile within the district.

I therefore **CONCLUDE** that at all times relevant from 2009 to 2014, the parents were domiciled within the North Hunterdon-Voorhees Regional School District.

Accordingly, A.M.T. was entitled to receive a free and appropriate education at the Matheny School, paid for by the district.[8]

Special education considerations

This matter was brought under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. § 1400 et seq., or Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C.A. § 794a. A.E.T. and L.T. contend that the child's disabilities entitled him to a free and appropriate public education and stay-put at his Matheny placement paid for by the district for as long as they were domiciled within the district.

"Stay put" essentially prevents the school district from making a change in placement from an agreed-upon IEP. The proper standard for relief is the "stay-put" provision under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. § 1400, et seq. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (citing Zvi D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982)) (stay put "functions, in essence, as an automatic preliminary injunction"). The stay-put provision provides in relevant part that "during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child." 20 U.S.C.A. § 1415(j).

The relevant IDEA regulation and its counterpart in the New Jersey Administrative Code reinforce that a child must remain in his or her current educational placement "during the pendency of any administrative or judicial proceeding regarding a due process complaint." 34 C.F.R. § 300.518(a) (2014); N.J.A.C. 6A:14-2.7(u). The stay-put provision functions as an automatic preliminary injunction which dispenses with the need for a court to weigh the factors for emergent relief such as irreparable harm and likelihood of success on the merits, and removes the court's discretion regarding whether an injunction should be ordered. Drinker, supra, 78 F.3d 859. Its purpose is to

[8] The district is correct that simply providing the information to the case manager and others would not constitute a waiver by the Board. Only the Board can waive tuition for a non-resident student. N.J.S.A. 18A:38-3(a). However, it should be noted that Board employees were aware of the parents' stay in the Netherlands, yet nevertheless treated the parents as residents of the district.

maintain the status quo for the child while the dispute over the IEP remains unresolved. Ringwood Bd. of Educ. v. K.H.J., 469 F. Supp.2d 267, 270–71 (D.N.J. 2006).

In this matter, the child remained at the Matheny School, which was his placement for purposes of stay put, until the issue of residency could be decided. Having concluded that the parents were in fact domiciled within the district for the time period between 2009 and 2014, I **CONCLUDE** that A.M.T. remained entitled to special education services and the maintenance of his placement at Matheny.[9]

ORDER

It is hereby **ORDERED** that the parents' petition to invoke the stay-put provisions for the child's placement at Matheny is hereby **GRANTED**, and his placement at the Matheny School is continued for as long as he remained eligible on account of age. The district's petition for reimbursement of tuition paid to Matheny for all periods of ineligible attendance is herby **DENIED**.[10]

[9] A.M.T has now reached the age of twenty-one and his services are handled by the DDD.
[10] Again, this does not appear to be a special education issue, but rather, one for the Commissioner of the Department of Education. To the extent the appeal encompassed special education issues, this decision addresses them.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2014) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2014). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

January 14, 2015 _____
DATE

SUSAN M. SCAROLA, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

mel

WITNESSES

For the parents:

A.E.T

L.T.

For the district:

Mary Patricia Publicover

EXHIBITS

For the parents:

P-1 A.E.T. sampling of work assignments

P-2 Email from A.E.T. to Mary Pat Publicover dated April 12, 2013

P-3 Email from A.E.T. to Mary Pat Publicover dated April 22, 2013

P-4 Email chain between Mary Pat Publicover and A.E.T. ending May 10, 2013

P-5 Letter from KPMG Meijburg & Co., dated April 11, 2013

P-6 Email chain between L.T. and Shirley DiBrango ending December 16, 2009

P-7 Email chain between L.T. and Shirley DiBrango ending December 15, 2011

P-8 Email chain between L.T. and Shirley DiBrango ending February 16, 2012

P-9 Draft IEP cover page dated January 18, 2013, with handwritten annotations

P-10 Email chain between L.T. and Shirley DiBrango ending January 29, 2013

P-11 Email chain between L.T. and Shirley DiBrango ending January 19, 2010

P-12 Email chain between L.T. and Shirley DiBrango ending August 27, 2010

P-13 Email chain between L.T. and Shirley DiBrango ending September 28, 2010

P-14 Email chain between L.T. and Shirley DiBrango ending January 3, 2011

P-15 Email chain between L.T. and Shirley DiBrango ending February 25, 2011

P-16 Email chain between L.T. and Shirley DiBrango ending February 17, 2012

P-17 Email chain between L.T. and Shirley DiBrango ending February 18, 2011

For the district:

R-1 Email chain between Shirley DiBrango and L.T. dated January 15 and 19, 2010

R-2 Email chain between Shirley DiBrango and L.T. dated August 26 and 27, 2010

R-3 Email chain between Shirley DiBrango and L.T. dated September 19 and 28, 2010

R-4 Email chain between Shirley DiBrango and L.T. dated December 21 and 29, 2010, and January 3, 2011

R-5 Email chain between Shirley DiBrango and L.T. dated February 22, 23, and 24, 2011

R-6 Email chain between Shirley DiBrango and L.T. dated December 20, 22, and 26, 2012, and January 2, 2013

R-7 Email from L.T. to Shirley DiBrango dated January 18, 2013

R-8 Email from L.T. to Shirley DiBrango dated January 24, 2013

R-9 Email chain between Shirley DiBrango and L.T. dated March 21 and 25, 2013

R-10 Correspondence from Mary Pat Publicover to A.E.T and L.T. dated April 10, 2013, and copy of signed certified return receipt card

R-11 Correspondence from A.E.T. and L.T. to Mary Pat Publicover, dated April 14, 2013 (with enclosed documents)

R-12 Email from L.T. to Mary Pat Publicover dated April 16, 2013

R-13 Correspondence from Mary Pat Publicover to A.E.T. and L.T. dated April 22, 2013

R-14 Correspondence from Mary Pat Publicover to A.E.T. and L.T. dated April 25, 2013, and copy of signed certified return receipt card

R-15 Notice of Ineligibility of Continued Enrollment, dated May 21, 2013, and copy of signed certified return receipt card

R-16 Correspondence from Shirley DiBrango, M.A., LDTC, to Sean Murphy, dated June 5, 2013

R-17 Correspondence from Shirley DiBrango, M.A., LDTC, to Sean Murphy, dated June 11, 2013

R-18 Tuition contracts and invoices for services between respondent and the Matheny School for school years 2009–10, 2010–11, 20111–12 and 2012–13

R-19 Correspondence from State of New Jersey, Department of Education, dated February 17, 2011, February 15, 2012, January 7, 2013, and January 9, 2014

R-20 Email chain between Shirley DiBrango and L.T. dated December 16, 2009

R-21 Email from A.E.T. to Mary Pat Publicover dated April 12, 2013

R-22 Email from A.E.T. to Mary Pat Publicover dated May 7, 2013–May 10, 2013

R-23 Correspondence from Mary Pat Publicover dated March 11, 2013, with copy of signed certified return receipt card