

S.M., on behalf of minor children, A.T.,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF UNION, UNION COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Pro se petitioner filed an appeal of the determination of the respondent Board that her child, A.T., was not entitled to a free public education in Union Township schools between September 6, 2016 and November 16, 2016. The Board contended that a residency investigation showed that petitioner was not a domiciliary of Union Township during this time, and sought reimbursement of tuition for A.T.’s period of ineligible attendance.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a), public schools are required to provide a free education to individuals aged 5 to 20 years who are domiciled within the school district; the domicile of unemancipated children is the domicile of their parent or guardian; where a local board determines that a child is not properly domiciled in its district, *N.J.S.A.* 18A:38-1(b)(2) provides that the parent or guardian may contest the Board’s residency decision, and bears the burden of proof by a preponderance of the evidence that the child is eligible for a free education; here, the petitioner was unable to produce compelling evidence that she was a domiciliary of Union during the time period in question. The ALJ concluded that petitioner was not domiciled in the Union School District for the forty-five day period between September 6, 2016 and November 16, 2015; accordingly, the Board is entitled to reimbursement for forty-five days of tuition at \$78.28 per day, or a total of \$3,522.60.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. Petitioner was directed to reimburse the Board in the amount of \$3,522.60 for the period of A.T.’s ineligible attendance. 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.

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The parties did not file exceptions.

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain her burden of establishing that she was a domiciliary of Union between September 6, 2016 and November 16, 2016. The Commissioner further concurs with the ALJ's conclusion that A.T. was, therefore, not entitled to a free public education in the District's schools during this time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Board is entitled to tuition reimbursement in the amount of \$3,522.60 (\$78.28 per day for forty-five days) for the time period between September 6, 2016 and November 16, 2016, during which time A.T. was ineligible to attend, as detailed in the ALJ's Initial Decision.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$3,522.60 for tuition costs incurred during the time period that A.T. was ineligible to attend school in Union. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 12, 2017

Date of Mailing: January 12, 2017

¹ The Commissioner was not provided with a transcript of the November 15, 2016 hearing at the OAL.

² 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

OAL DKT. NO. EDU 13914-16

AGENCY DKT. NO. 207-7/16

S.M.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF UNION, UNION COUNTY,**

Respondent.

S.M., petitioner appearing pro se,

Stephen J. Christiano, Esq. for respondent (Cleary, Giacobbe, Alfieri & Jacobs,
LLC)

Record Closed: November 15, 2016

Decided: November 29, 2016

BEFORE: **JOANN LASALA CANDIDO**, ALAJ

STATEMENT OF THE CASE

Respondent, Board of Education of the Township of Union, seeks reimbursement of tuition from petitioner, parent of A.T. (DOB 11/09/1997) for a period of forty-five days, commencing September 6, 2016 and ending November 15, 2016, asserting that

petitioner and her son were not domiciled within the Union School District. The tuition is \$78.28 per day for a total reimbursement sought of \$3,522.60.

PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law (OAL) on September 15, 2016, for hearing as a contested case.

On due notice to all parties, the hearing was scheduled and heard on November 15, 2016.

ISSUE

The issues in this matter are whether A.T. is eligible to attend respondent's public schools free of charge in accordance with N.J.S.A. 18A:38-1 and, if not, whether respondent's requests for tuition reimbursement A.T. for forty-five days should be granted.

FINDINGS OF FACT

Respondent's residency inspector, John Matos, credibly testified that on at least sixteen occasions during the 2015-2016 school year, he never observed petitioner leaving a residence in Union to bring her son to school even though he reported to Union High School on those dates. A residency hearing was conducted on January 12, 2016 with petitioner and her children present. It was determined by the assistant superintendent that there was a residency violation. Matos continued his investigation and did spot checks late in the evening and petitioner was always at her mother's address in Irvington. However, the respondent is not seeking tuition for the previous school year. Matos continued surveillance from October 26, 2016 to November 9, 2016 as well as spot checks late in the evening. He determined that petitioner continued to be observed at the Irvington address and not the Union address. It now appears however that A.T. is residing at the Union address.

Petitioner presented rent receipts for the address in Union from June 2016 through November 2016. She was not able to produce the signor of these receipts at the hearing. Petitioner was also unable to present a lease with her name on it or a driver's license with the Union address.

LEGAL ANALYSIS

Any child between the ages of five and twenty years old is entitled to a free public education in the district in which he is a resident. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). A student is a resident of a school district if his parent or guardian has a permanent home in the district such that "the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere." N.J.A.C. 6A:22-3.1(a)(1). 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.

Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. State v. Benny, 20 N.J 238, 250 (1955). The domicile of an unemancipated child is that of his or her parent, custodian or guardian. P.B.K. o/b/o minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super 419, 427 (App. Div. 2001).

Where a local board determines that a child is not properly domiciled in its district, N.J.S.A. 18A:38-1(b)(2) provides a right of appeal to the parents as follows:

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

In support of its claim for tuition, respondent produced residency inspector John Matos, who testified in its behalf. He stated that the results of the investigation supported the finding that A.T. and his mother, S.M. are domiciled out-of-district, but

continued to attend public schools in the district for a total of forty-five days this school year. The cost of tuition for A.T for forty-five days at \$78.28 per day is a total of \$3,522.60.

The Board asserts that it is entitled to be reimbursed for tuition for the period of A.T.'s ineligible enrollment in its high school. Where, as here, the evidence does not support the claims of the resident, the Commissioner of Education is authorized to assess tuition pursuant to N.J.A.C. 6A:22-6.2(a), which provides as follows:

If in the judgment of the Commissioner the evidence does not support the claim of the resident, he shall assess the resident tuition for the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the Commissioner are enforced.

N.J.S.A. 18A: 38-1(b) likewise requires that tuition be calculated on the basis of 1/180 of the total annual per pupil cost to the district multiplied by the number of days of ineligible attendance.

Based upon the facts adduced and the legal principles cited above, I **CONCLUDE** that petitioner was not a domiciliary in the Union School District for the forty-five days sought and that respondent is entitled to reimbursement for the costs of audited tuition in the amount of \$3,522.60.

DECISION AND ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's determination that petitioner and her son were not residents and domiciliary in Union, New Jersey, and were not domiciled within its school district during the period of September 6, 2016 through November 15, 2016 is hereby **AFFIRMED**. It is further **ORDERED** that respondent is entitled to reimbursement from petitioner for the cost of audited tuition in the amount of \$3,522.60.

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.

November 29, 2016



DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

November 29, 2016

Date Mailed to Parties:

ljb

APPENDIX

LIST OF WITNESSES

For Petitioner:

S.M.

For Respondent:

John Matos

LIST OF EXHIBITS

For Petitioner:

P-1 Rent receipts – September, October and November 2016

P-2 Rent receipts June, July and August 2016

For Respondent:

R-1 Driver Inquiry

R-2 Registration Information Inquiry

R-3 Residency Hearing minutes

R-4 Letter from assistant superintendent dated May 27, 2016

R-5 Residency investigation

R-6 Residency investigation

R-7 School Calendar 2016-2017

R-8 2016-2017 tuition rates