E.K., on behalf of minor children, K.K., Jr., and:

M.K.,

PETITIONER. :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

BOROUGH OF POINT PLEASANT, OCEAN COUNTY,

RESPONDENT.

SYNOPSIS

Petitioning parent challenged Board's determination removing her children from the District's schools for nonresidency.

The ALJ concluded that petitioner abandoned her petition by failure to appear to prosecute her action. Nevertheless, the ALJ requested respondent to present evidence sufficient to establish a *prima facie* case on the issue *sub judice*. The ALJ found that, based upon certifications presented, the Board's determination that petitioner and her children were not domiciled within the District and were not entitled to a free education in the District for the period in question (commencing in the 1999-2000 school year) was to be upheld. The ALJ ordered petitioner to pay tuition for the children for the year 1999-2000, together with pro-rated tuition for the year 2000-2001 until the students were actually removed from the school.

Commissioner adopted the findings and determination in the Initial Decision and ordered petitioner to pay tuition for the period of ineligible school attendance.

OAL DKT. NO. EDU 2193-00 AGENCY DKT. NO. 44-2/00

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The record and Initial Decision issued by the Office of Administrative Law have been reviewed. Petitioner's exceptions and the Board's reply thereto were filed pursuant to *N.J.A.C.* 1:1-18.4.

Petitioner's exceptions essentially reiterate information contained in her Petition of Appeal and its accompanying documents. Additionally, petitioner submits a copy of a New Jersey driver's license, which bears her name and the 506 Hardenbergh Avenue, Point Pleasant address, and a copy of a property tax bill and water bill for that address which bears her name jointly with her husband and mother-in-law. Petitioner also submitted a copy of an unsigned letter from Thomas and Jean Marie Harris dated November 17, 1999 to petitioner's former attorney which reads in pertinent part:

[Petitioner's sons] have been friends with our two sons for the past five years that we have been residents of 511 Hardenbergh Avenue, Point Pleasant. It has been our understanding that the boys have departed from 506 Hardenbergh Avenue when looking for a playmate and have returned to the same location when their playtime was completed.

On several occasions over the past five years, our two sons have gone to 506 Hardenbergh Avenue, Point Pleasant, also looking for

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a playmate. Upon ringing the bell, they have been greeted by either [the sons], their mother, [petitioner], and on some occasions their

grandmother.

We are aware that [the parents] are separated at this time and sometimes "Grandma" baby-sits so that [petitioner] can go to work. The friendship between our two sons and [petitioner's] two

sons remains the same.

Upon a thorough review of the record, including the parties' exceptions, the

Commissioner agrees with the findings and conclusions of the Administrative Law Judge (ALJ)

which determine that petitioner's children do not meet the eligibility requirements for attending

school free of charge in respondent's District pursuant to N.J.S.A. 18A:38-1.

Upon examination of petitioner's submissions to the record, and even granting

petitioner every inference in her favor, the arguments she sets forth and documentation she

submits do not overcome the weight of the evidence presented by the Board through the

surveillance reports and certification of Janet Baumeister, its Attendance Officer which provide

documentation that petitioner's children are not domiciled in Point Pleasant Borough.

Accordingly, the Commissioner adopts the recommended order of the ALJ

directing petitioner to pay tuition to the Point Pleasant Borough Board of Education in the

amounts set forth in the Initial Decision for the period of ineligible school attendance by her sons

during the 1999-2000 and the 2000-2001 school years.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: November 3, 2000

Date of Mailing: November 3, 2000

The Commissioner notes that there is nothing in the record of this matter indicating that an extraordinary circumstance prevented petitioner from attending the hearing, which was scheduled by the ALJ two months in advance; nor does petitioner make a claim of extraordinary circumstance for nonattendance at the hearing in her exceptions. Further, the Commissioner concurs with the ALJ that, under the particular circumstances of this matter,

it was appropriate to request that the Board make a *prima facie* case in support of its position.

² This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to N.J.S.A. 18A:6-27 et seq. and N.J.A.C. 6A:4-1.1 et seq., within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.