

R.O.G., on behalf of minor children, G.G.G :
AND G.O.G. :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF UNION, UNION COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner challenged the residency determination of the respondent Board that his minor children are not entitled to a free public education in the Union Township School District. Petitioner asserted that his children live with him in Union. The Board contended that the children are domiciled out-of-district, with their mother, in Irvington. Accordingly, the Board sought tuition reimbursement for both children for the period from January 9, 2018 through the end of the school year in June 2018. The matter was transmitted to the Office of Administrative Law as a contested case, and a hearing was held on June 20, 2018.

The ALJ found, *inter alia*, that: the issue herein is whether petitioner’s minor children are eligible to attend Union Township school free of charge, in accordance with *N.J.S.A. 18A:38-1*; petitioner has resided in Union since 2015, but travels frequently as a truck driver along the Washington, D.C., to Boston corridor; the mother of his children, M.V., lives in Irvington and works evenings at a nursing home; the Board’s residency investigator conducted numerous morning surveillances of petitioner’s Union address, but did not observe the children leaving from the home for school; surveillance was then set up at M.V.’s address in Irvington, and the children were observed leaving Irvington and proceeding to school in Union; and in support of its claim for tuition, the Board offered the credible testimony of its residency investigator. The ALJ concluded that petitioner’s children were not domiciled in Union during the period from January 9, 2018 through June 2018; accordingly, petitioner was ordered to reimburse the Board for tuition in the total amount of \$18,384 for the period of his children’s ineligible attendance in Union Township schools.

Upon review of the record in this matter, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision as the final decision in this matter.

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.

OAL DKT. NO. EDU 5034-18
AGENCY DKT. NO. 65-3/18

R.O.G., on behalf of minor children, G.G.G :
AND G.O.G. :
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PETITIONER, :
 :
V. : COMMISSIONER OF EDUCATION
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BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF UNION, UNION COUNTY, :
 :
RESPONDENT. :

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

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons stated in the Initial Decision – that G.G.G. and G.O.G. are not domiciled in the district, and that the Board’s decision denying the ability of G.G.G. and G.O.G. to attend school in the district was not arbitrary, capricious or unreasonable. Accordingly, the petitioner shall pay the Board \$18,384.00 in tuition costs for G.G.G. and G.O.G.’s ineligible enrollment in the District from January 9, 2018 through June 2018.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: August 9, 2018

Date of Mailing: August 9, 2018

¹ The record did not include a transcript of the hearing held at the Office of Administrative Law on April 9, 2018.

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 05034-18

AGENCY DKT. NO. 65-3/18

R.O.G. ON BEHALF OF MINOR CHILDREN

G.G.G. AND G.O.G.,

Petitioners,

v.

TOWNSHIP OF UNION BOARD OF EDUCATION,

Respondent.

Lisa L. Pugliese, Esq. for petitioner (Pugliese & Salemi, LLP)

Stephen J. Christiano, Esq. for respondent (Sciarillo Cornell Merlino
McKeever & Osborne, LLC)

Record Closed: June 20, 2018

Decided: June 27, 2018

BEFORE: **JOANN LASALA CANDIDO**, ALAJ

STATEMENT OF THE CASE

Petitioner R.O.G. challenges the residency determination made by respondent Township of Union Board of Education. Respondent asserts that minor children G.G.G.

and G.O.G. are not entitled to attend school in Union Township pursuant to N.J.S.A. 18A:38-1 et seq. Petitioner contends that his children reside with him in Union and not with their mother in Irvington. 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 petitioner's children are domiciled out-of-district in Irvington with their mother, but continued to attend public schools in the district. The district is seeking the cost of tuition for both children commencing on January 9, 2018 at a total of \$9,258.00 for G.G.G. and \$9,126.00 for G.O.G.

Petitioner timely filed an appeal and the matter was transmitted to the Office of Administrative Law on April 9, 2018. A hearing was scheduled for June 20, 2018, on which date the record closed.

ISSUE

The issue in this matter is whether or not minor children G.G.G. and G.O.G. are eligible to attend respondent's public schools free of charge in accordance with N.J.S.A. 18A:38-1.

FINDINGS OF FACT

Based on the testimonial and documentary evidence, I **FIND** the following as **FACTS** in this matter:

1. The district is seeking tuition reimbursement as of January 2018, for G.G.G. and G.O.G. who were enrolled in the Union township school district. R.O.G. resides in Union at his brother's home since 2015. He is a truck driver and his hours fluctuate. R.O.G. travels to Washington, D.C., Boston and Philadelphia each month. The mother of his children, M.V., is employed in a nursing home from approximately 4:30 p.m. to 9:00 p.m. and she has rented an apartment in Irvington for the past five years.

2. Investigator John Matos issued a report on January 31, 2018 (R-1) and an additional report on June 15, 2018. (R-2)
3. Matos conducted numerous morning surveillances at R.O.G.'s resident beginning January 10, 2018. When the children were not observed leaving his home in the morning after approximately five days, Matos then conducted afternoon surveillances. He observed a black Acura in the afternoon picking up the children and he followed the vehicle to M.V.'s Irvington housing complex. Matos then set up morning surveillance in Irvington for two weeks and every school day between January 15 and 31, 2018, the children were observed leaving Irvington and proceeding to school in Union.
4. Matos added an addendum to the original investigation based upon R.O.G.'s statement that he drops off the children at their mother at approximately 6:00 a.m. He again observed the children leaving Irvington the first week of June leaving Irvington. The following week he observed the children in both locations.
5. The two children, G.G.G. and G.O.G. reside in Irvington, New Jersey.

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 Matos, who credibly testified in its behalf.

The Board asserts that it is entitled to be reimbursed for tuition for the period of ineligible enrollment in its school, effective January 9, 2018 as a result of the surveillance of Matos observing the living in Irvington at their mother's Irvington complex. 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's children were not a domiciliary in the Union School District for the months sought and that respondent is entitled to reimbursement for the costs of audited tuition in the amount of \$9,258.00 for G.G.G. and \$9,126.00 for G.O.G.

DECISION AND ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's determination that petitioner's two children are not residents and domiciliary in Union, New Jersey, and were not domiciled within its school district during the period of January 9, 2018 through June 2018 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 \$18,384.00.

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.



June 27, 2018

DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

June 27, 2018

Date Mailed to Parties:

June 27, 2018

ljb

APPENDIX

LIST OF WITNESSES

For Petitioner:

M.V.

N.G.

R.O.G.

For Respondent:

John Matos

LIST OF EXHIBITS

For Petitioner:

None

For Respondent:

R-1 Report of John Matos dated January 31, 2018

R-2 Report of John Matos dated June 15, 2018

R-3 Tuition owed