

176-18

J.G., on behalf of minor children,	:	
C.G. AND E.G.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF RANDOLPH,	:	
MORRIS COUNTY,	:	
	:	
RESPONDENT.	:	
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SYNOPSIS

Pro-se petitioner appealed the determination of the respondent Board that his children were not residents of Randolph Township during the 2016-2017 school year, and therefore were not eligible for a free public education in respondent's school district. The Board alleged that the children were not residing at the address provided by petitioner, but rather at a home in Mt. Olive, and accordingly sought repayment of tuition for the 2016-2017 school year. On April 13, 2018, the Commissioner issued a decision in the matter, adopting the Administrative Law Judge's (ALJ) determination that C.G. and E.G. were not eligible to attend school in the District between January 7, 2017 and the end of June 2017; however, the Commissioner remanded the matter to the OAL for a determination as to the exact amount of tuition due to the Board for the period of C.G. and E.G.'s ineligible attendance.

On remand, the ALJ found, *inter alia*, that: based on the evidence in this case, C.G. and E.G. have not been domiciled in the Randolph School District since January 7, 2017, the date upon which their residency in Mt. Olive commenced; the non-resident tuition rate in Randolph for the 2016-2017 school year was \$13,921.00 per child; the monthly tuition rate for that period was \$1,546.77 per child; and the audited annual non-resident tuition per child in respondent's district for the 2016-2017 school year was \$8,740.16. The ALJ concluded that the Board is entitled to tuition reimbursement from petitioner for the period of his children's ineligible attendance in the total amount of \$17,480.32, and so ordered.

Upon review, the Commissioner, *inter alia*, concurred with the determination of the ALJ that petitioner's children were not eligible to attend school in respondent's district between January 7, 2017 and June 2017, and ordered petitioner to reimburse the Board in the amount of \$17,480.32 for C.G. and E.G.'s ineligible attendance in Randolph schools. In so deciding, the Commissioner rejected two of the ALJ's factual findings which were inconsistent with the record and final determination in this matter. Accordingly, the Initial Decision was adopted with modification.

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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June 7, 2018

OAL DKT. NO. EDU 5658-18
(EDU 17578-17 ON REMAND)
AGENCY DKT. NO. 265-11/17

J.G., on behalf of minor children,	:	
C.G. AND E.G.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF RANDOLPH,	:	
MORRIS COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) on remand have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, J.G., and the Randolph Board of Education’s (Board) reply thereto.¹ On April 13, 2018, the Commissioner issued a decision adopting the Administrative Law Judge’s (ALJ) determination that C.G. and E.G. were not eligible to attend school in the District between January 7, 2017 and June 2017. The Commissioner also found that the Initial Decision did not adequately and completely address the tuition costs that the petitioner was required to reimburse the Board for C.G. and E.G.’s ineligible attendance in the District. Therefore, this matter was remanded to the OAL exclusively for a determination as to the exact amount of tuition costs that the petitioner owes the Board for C.G. and E.G.’s ineligible attendance in the District between January 7, 2017 and June 2017. On remand, the ALJ found

¹ Despite the fact that the petitioner’s exceptions were filed one day late, the arguments were considered.

that the Board is entitled to reimbursement from the petitioner in the amount of \$17,480.32 for his children's ineligible attendance in the District.

Upon review of the revised record on remand, the Commissioner finds that the non-resident tuition rate for the 2016-2017 school year for the Randolph School District is \$15,127.00 per pupil for grades 1-5.² *See*, Affidavit of Eric Burnside. Thus, the daily tuition rate is \$84.04 for a 180-day school year. The Commissioner further finds that C.G. and E.G. attended school in the District for 104 days between January 7, 2017 and June 2017. *Id.* Therefore, the cost for each child's ineligible attendance in the District for the 2016-2017 school year was \$8,740.16, which equals a total of \$17,480.32 in tuition costs owed by petitioner to the Board.

In the Initial Decision, the ALJ similarly found that the total tuition amount owed by the petitioner is \$17,480.32; yet the ALJ made two factual findings that were not supported by the information in the record. First, in factual finding number 8, the ALJ erroneously stated that the "[n]on-resident student tuition rate for the 2016-2017 school year is \$13,921.00 per child ..." Initial Decision at 3. Factual finding 8 is clearly inconsistent with the actual tuition rate of \$15,127.00 per pupil for the 2016-2017 school year.³ Additionally, factual finding number 10 states that "[t]he monthly rate for the 2016-2017 school year is \$1,546.77." *Ibid.* It is not possible to establish an accurate monthly tuition rate because there is not a set number of school days in

² On August 15, 2017, in the Board's Resolution for the Residency Hearing of C.G. and E.G., the Board assessed tuition in the amount of \$13,921.00 per child for the ineligible attendance in the District for the 2016-2017 school year. At that time, the Board used the tuition rate for the 2014-2015 school year because the 2016-2017 tuition rate was not yet available. On February 26, 2018, the Department of Education determined that the District's costs per pupil in grades 1-5 for the 2016-2017 school year is \$15,127.00. Despite the Board's initial assessment, the Board was not precluded from seeking the actual tuition costs for the 2016-2017 school year.

³ The ALJ did later state in the Initial Decision that the \$13,921.00 tuition rate was based upon the 2014-2015 school year. Initial Decision at 5.

each month. There is nothing in the record that supports either finding; therefore, factual findings number 8 and number 10 are rejected.

Accordingly the Initial Decision is adopted as modified. J.G. is hereby ordered to reimburse the Board tuition costs in the amount of \$17,480.32 for the period of C.G. and E.G.'s ineligible attendance in the District between January 7, 2017 and June 2017.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: 6/07/18

Date of Mailing: 6/11/18

⁴ 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 05658-18
AGENCY DKT. NO. 265-11/17
(ON REMAND EDU 17578-17)

J.G. ON BEHALF OF MINOR CHILDREN

C.G. & E.G.,

Petitioners,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF RANDOLPH, MORRIS COUNTY,**

Respondent.

J.G., petitioner, pro se

Matthew J. Donahue, Esq. for respondent, board of Education of the Township
of Randolph (Schenck, Price, Smith & King, LLP)

Record Closed: April 24, 2018

Decided: May 7, 2018

BEFORE **JOANN LASALA CANDIDO**, ALAJ:

STATEMENT OF THE CASE

Petitioner J.G., the father of the minor children C.G. and E.G., appeals the determination of the Randolph Township Board of Education (the "Board"/respondent)

that J.G. does not reside within the Randolph Township school district and that tuition reimbursement is required. The Board alleges that the minor children were not residing at the address provided by the petitioner but rather were residing in their home in Mt. Olive and seeks repayment of tuition.

PROCEDURAL HISTORY

On July 10, 2017, the Board notified J.G. that the children were ineligible to continue to attend school within the district and they were not domiciled in Randolph for the 2016-2017 school year. On or about November 15, 2017, the petitioner filed a timely notice of appeal after receiving a Notice of Residency Hearing Determination on August 16, 2017. The Board filed an answer on November 27, 2017. On November 30, 2017, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing was held on February 26, 2018, and following the receipt of the copies of rental receipts, the record closed on February 28, 2018. The undersigned rendered an Initial Decision under OAL Docket Number EDU 17578-17 on March 5, 2018. However, the matter was remanded to the OAL by the Commissioner by Order dated April 13, 2018, for a determination as to the exact amount of tuition costs that the petitioner owes the Board for C.G. and E.G.'s ineligible attendance in the District between January 7, 2017 and June 2017.

FINDINGS OF FACT

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

1. At the start of the 2016-2017 school year, C.G. and E.G. were enrolled in Randolph school district as non-residents.

2. J.G. was advised that he had to secure residence in Randolph within one month of the start of the school year to avoid being assessed tuition pursuant to District Policy 5111. J.G. was granted an additional month extension to secure a Randolph residence. P-1 He had been residing in Westwood.
3. J.G. rented a one-bedroom apartment in Randolph, as a seven-month tenant effective November 19, 2016 and ending June 18, 2017, \$1340.00 rent per month. Rental payment receipts have been provided by J.G. through January 2017.
4. J.G. closed on a home in Mt. Olive, New Jersey on December 9, 2016. Utility service was effective December 15, 2016 at the Mt. Olive residence.
5. Furniture was delivered to the Mt. Olive home on January 4 and 6, 2017. P-8 and 9. A home repair was done on January 7, 2017. P-11
6. A Default Judgement was entered in Special Civil Part, Superior Court of New Jersey, Morris County on March 24, 2017, for non-payment of rent at the Randolph apartment in the amount of \$1600.00. R-1
7. J.G.'s Mt. Olive residence is effective January 7, 2017.
8. Non-resident student tuition rate for the 2016-2017 school year is \$13,921.00 per child in Randolph school district, based upon the State Tuition Rate Notice.
9. C.G. and E.G. were domiciled in Mt. Olive in January 2017 and therefore ineligible to continue to attend its school District.
10. The monthly rate for the 2016-2017 school year is \$1,546.77 per child.

11. Tuition must be assessed from January 7, 2017 through June 2017.
12. Petitioner was not assessed tuition for school holidays or inclement weather, for a total of 104 days at \$8,740.16 per child. Personal vacation days are not deducted.

Petitioner bears the burden to prove that his children were domiciled in the Township of Randolph for the 2016-2017 school year. Failure to sustain that burden leaves in place and affect the findings of Board at its hearing regarding domicile.

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).

From the evidence submitted, C.G. and E.G. have been domiciled in Mt. Olive while attending school in Randolph Township from January 2017 through the end of the 2016-2017 school year. J.G. has provided no proof by a preponderance of the credible evidence to sustain his burden that the Randolph apartment was considered his and the children’s true and fixed permanent residence even after he closed on his Mt. Olive home.

The Board asserts that it is entitled to be reimbursed for tuition for the period of C.G. and E.G.'s ineligible enrollment in its 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.

Respondent provided a Resolution for the Residency Hearing of C.G. and E.G. that stated the per student tuition rate for the 2016-2017 school year is \$13,921.00 per child. R-7. However, that amount was based upon the 2014-2015 school year.

Based upon the facts adduced and the legal principles cited above, I **CONCLUDE** that C.G. and E.G. have not been domiciliary in the Randolph School District since January 7, 2017 and that respondent is entitled to reimbursement from petitioner for the costs of audited tuition at a rate of \$8,740.16 per child.

DECISION AND ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's determination that petitioner, J.G. and his children are not residents and domiciliary in Randolph, New Jersey, and were not domiciled within its school district during the period of January 7, 2017 through June 2017 is hereby **MODIFIED** to reflect this time period. It is further **ORDERED** that respondent is entitled to reimbursement from petitioner for the cost of audited tuition for his two children in the amount of \$17,480.32.

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.

May 7, 2018



DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

May 7, 2018

Date Mailed to Parties:

ljb

APPENDIX

LIST OF EXHIBITS

Joint:

J-1 Apartment Lease Contract

For Petitioner:

- P-1 District Policy – 5111 – Eligibility of Resident/Nonresident Students
- P-2 E-mail from petitioner to Fano dated September 19, 2016
- P-3 E-mail to petitioner from Fano dated October 14, 2016
- P-4 J.G. residency timeline
- P-5 E-mail to Fano from Gerry Eckert dated February 2, 2017
- P-6 Wells Fargo account
- P-7 Optimum statement
- P-8 Packing invoice dated 7-28-16 and Atlas moving invoice delivery signed 1-4-17
- P-9 Home and Kids furniture delivery dated 1-6-17
- P-10 Home Inspection Report dated October 28, 2016
- P-11 Smart Home Solutions dated 1-7-2017
- P-12 NJ Natural Gas invoice for Dec. 16 to January 25, 2017 in the amount of \$333.03
- P-13 JCP&L service start date 12-15-2016
- P-14 Notice to Vacate Westwood apartment.
- P-15 Cashier Checks to Center Grove
- P-16 Renters Insurance Application effective date 11-16-2016
- P-17 E-mail to Fano from Paul Bachrach dated 2-1-2017
- P-18 E-mail payment confirmation from Randolph apartment to S.G.
dated January 7, 2017

For Respondent:

- R-1 Default Judgement dated March 24, 2017
- R-2 Notes dated 8-15-17
- R-3 JCP&L dated 12-29-2016
- R-4 JCP&L dated 1-31-2017
- R-5 JCP&L dated 1-16-2017
- R-6 Affidavit
- R-7 Resolution for the Residency Hearing of C.G. & E.G.
- R-8 Deed dated 12-9-2016