

R.E. and S.M., on behalf of minor child, N.E.,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP OF UNION, UNION COUNTY,	:	DECISION
RESPONDENT.	:	

SYNOPSIS

In March 2018, *pro se* petitioners appealed the determination of the respondent Board that their child, N.E., is not entitled to a free public education in Union Township schools. Petitioners contended that they have lived on Balmoral Avenue in Union Township for eight years, and that their child, N.E., is met at the school bus by his mother, S.M., each day; further, because N.E. is a special needs child and sometimes needs to unwind at the end of the school day, S.M. often drives N.E. to different stores and buys him some food before they return back to the house. The Board argued that a residency investigation indicated that N.E. is not domiciled in Union Township. A hearing in this matter was held in June 2018, and an Initial Decision was issued shortly thereafter. Upon review by the Commissioner, the case was remanded to the OAL for clarification of the facts and the legal analysis underlying the ALJ's conclusion that petitioners are domiciled in Union Township and N.E. is entitled to a free public education in respondent's school district.

On remand, the ALJ found, *inter alia*, that: petitioners reside together with their child in Union; petitioners have resided in their home for eight years; N.E. attends a special needs school in Fanwood, New Jersey, pursuant to his IEP; the respondent Board provides bus transportation for N.E., however S.M. takes him to school on days when N.E. has behavioral issues in the morning; S.M. also takes her son to the store every day after he gets off the bus to allow N.E. to unwind before going home; pursuant to *N.J.S.A.* 18A:38-1(b)(2), petitioners have the burden of proof in a determination of residency; the petitioners submitted copies of their driver's license, New Jersey Insurance Identification Card, and the vehicle registration card for S.M.'s car; all documents bear the same address on Balmoral Avenue in Union; petitioners also furnished a copy of the deed to their property on Balmoral Avenue; further, petitioners credibly testified at the June hearing that they have resided with their child, N.E., at the Balmoral address for the past eight years. The ALJ concluded that petitioners are domiciled at their home in Union, and ordered that the respondent Board's residency determination in this matter be reversed.

Upon review of the record of this matter, as well as the ALJ's decision on remand, the Commissioner adopted the Initial Decision as the final decision in this matter.

<p>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.</p>

November 1, 2018

OAL DKT. NO. EDU 11911-18
(EDU 04252-18 ON REMAND)
AGENCY DKT. NO. 54-3/18

R.E. and S.M., on behalf of minor child, N.E.,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP	:	DECISION
OF UNION, UNION COUNTY,	:	
RESPONDENT.	:	
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) and respondent's exceptions have been reviewed.¹

Upon such review, the Commissioner concurs with the ALJ's finding that R.E. and S.M. are domiciled in Union, and N.E. is, therefore, entitled to attend school in the District.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: November 1, 2018

Date of Mailing: November 1, 2018

¹ The exceptions – while reflecting respondent's obvious disagreement with the findings and conclusions contained within the Initial Decision – are unpersuasive, and substantially recast and reiterate the arguments made below, which were addressed by the Administrative Law Judge (ALJ) during the course of the case.

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 11911-18

AGENCY DKT. NO. 54-3/18

(ON REMAND EDU 04252-18)

R.E. & S.M. ON BEHALF OF N.E.,

Petitioner,

v.

TOWNSHIP OF UNION BOARD OF EDUCATION,

Respondent.

R.E. and S.M., petitioners, pro se

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

Record Closed: September 14, 2018

Decided: September 17, 2018

BEFORE **JOANN LASALA CANDIDO**, ALAJ:

STATEMENT OF THE CASE

Petitioners R.E. and S.M., challenges the residency determination made by respondent Township of Union Board of Education. Respondent asserts that minor

child N.E. is not entitled to attend school in Fanwood funded by Union Township Board of Education pursuant to N.J.S.A. 18A:38-1 et seq. Petitioner contends that they have been a resident of Union for the past eight years and that N.E. is entitled to attend school in Fanwood.

This matter was initially transmitted to the Office of Administrative Law, under OAL Docket No. EDU 04252-18 before the undersigned. A hearing was conducted and on June 27, 2018, an Initial Decision was rendered shortly thereafter. By Order dated August 8, 2018, the matter was remanded to the OAL “for clarification of the facts and the legal analysis underlying the ALJ’s conclusion, as well as further proceedings as necessary.”

On August 28, 2018, the undersigned sent correspondence to the parties stating that this matter will be handled on the papers, and to submit anything further that I can rely on when rendering my decision. On September 5, 2018, respondent submitted correspondence advising that the complete address of petitioners and the address that its investigator was referring to in its Exhibits R-1 and R-2 are one in the same, which is the Balmoral Avenue address. Respondent also asserts that S.M. and R.E. do not live at the address of record and that it was not until later in the school year (April, May and June 2018) when petitioners were aware of respondent’s surveillance and residency hearing looming that the investigator observed S.M.’s vehicle parked at the Balmoral home.

On September 11, 2018, petitioners submitted copies of their driver’s license, vehicle registration, car insurance and the deed to the home on Balmoral Avenue in Union, New Jersey.

ISSUE

The issue in this matter is whether minor child N.E. is eligible to attend respondent’s public schools free of charge in accordance with N.J.S.A. 18A:38-1.

FINDINGS OF FACTS

After careful review of the residency appeal, respondent's answer and affirmative defenses, I **FIND** the following **FACTS**:

1. R.E. and S.M. are the parents of N.E. They reside together with their fourteen-year-old child who attends a special needs school in Fanwood, New Jersey pursuant to his IEP.
2. R.E. and S.M. have resided in their home on Balmoral Avenue in Union since 2010.
3. This district provides bus transportation to N.E. who is a special needs student. S.M. takes him to school when the child has issues in the morning with his behavior. S.M. takes N.E. to the store every day after he gets off the school bus to allow the child to unwind before going home.
4. District Investigator Dan Hodge went to the petitioners' home on October 3, 9 10, 11, 12 and 24, 2017, to deliver registration papers since the child was not registered for the school year. He did not find anyone home.
5. On October 24, 2017, while Hodge was checking another house he noticed a school bus arrive at the Balmoral address. A student got out of the bus and into a car with license # L91XXX, which immediately left. He was asked to watch the house in the afternoon to see if that was a routine. (R-1)
6. On October 24, 2017, Hodge observed a student get out of the bus and enter S.M.'s car and drive off to Route 22.
7. In November 2017 after school, Hodge observed S.M. and N.E. leave the house after school and proceed to McDonalds on Route 22.
8. Once while Hodge observed S.M. driving, S.M. stopped her vehicle, got out of it and approached Hodge's vehicle to ask why he was following her. Hodge explained that he wanted to know where she lives and why she always leaves the house after the school bus arrives. He also explained that he had been to her house a dozen times with no response. S.M. stated that Hodge was

harassing her and threatened to press charges. The district informed Hodge to stop the investigation. (R-1)

9. Hodge resumed his investigation on January 30, 2018. R.E. came out from his home on Balmoral Avenue and asked Hodge why he was harassing him. Hodge explained that he was watching to see if N.E. came out of the house to attend school. R.E. called the police and Hodge stated that he would just leave but R.E. insisted that he wait for the police. When the police arrived, one of the officers was R.E.'s neighbor, Officer Santos. R.E. suggested Hodge come into the home to see the child sleeping. The police officers said they would also have to go in for Hodge's protection. R.E. then denied access to the officers and all parties left the home without going inside. (R-2)
10. Petitioners have resided in their home in Union for the past eight years. Petitioner's presented their current driver's license, NJM automobile insurance card and a deed to their home, dated July 21, 2010. All documents reflect the Balmoral Avenue address.

Petitioner bears the burden to prove that her child was domiciled in the Township of union for the 2017-2018 school year and not elsewhere. Failure to sustain that burden leaves in place and affect the findings of Board at its hearing regarding domicile. See N.J.S.A.18A:38-1(b)(2).

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).

In this matter, petitioners submitted copies of their driver's license, State of New Jersey Insurance Identification Card, Vehicle registration card for S.M. which reflects license plate L91XX, as well as a deed to the property, which all reflects the Balmoral address. Credibility is a key factor in evaluating the testimony of a witness. This evaluation involves personal observation of the witnesses' deportment on the stand; observing how a witness recalls the facts that allegedly took place and describes the details while testifying; examining the consistency of testimony given by the witnesses under both direct and cross-examination; and determining if any inconsistent statements or conflicting statements has any significance about conclusions reached after listening to the testimony. Finally, a sense of if the witness is being truthful will also be developed by the finder of fact. What is required is that the finder of fact assesses what the witnesses are saying considering the common sense of the picture that is being drawn. See Carbo v. U.S., 314 F.2d 718 (9th Cir. 1963) cert. denied sub._nom., Palermo v. U.S., 377 U.S. 953 (1964).

R.E. and S.M. credibly testified when confirming that they and their child reside at the Balmoral address and have done so for the past eight years. Further, there are several instances where respondent's investigator witnessed petitioners leaving the Balmoral residence it asserts petitioners are not residing in.

Based upon the facts adduced and the legal principles cited above, as well as the additional documents submitted, I **CONCLUDE** that petitioners are domiciled at their home in Union.

DECISION AND ORDER

Accordingly, it is hereby **ORDERED** that respondent's determination that petitioners and their child are not residents and domiciliary in Union, New Jersey be **REVERSED**.

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.

September 17, 2018



DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

September 17, 2018

Date Mailed to Parties:

ljb

APPENDIX

LIST OF WITNESSES

For Petitioner:

R.E.

S.M.

For Respondent:

Dan Hodge

LIST OF EXHIBITS

For Petitioner:

P-1 Driver's License of S.E.

P-2 Driver's License, Vehicle Registration and Insurance of S.M.

P-3 Deed to Balmoral Avenue, dated July 31, 2010

For Respondent:

R-1 Investigation Report of Dan Hodge dated January 30, 2018

R-2 Investigation Report of Dan Hodge dated June 18, 2018

R-3 Yearly out-of-district tuition