

S.J., ON BEHALF OF MINOR CHILD, S.W., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE SOUTH : DECISION
 ORANGE AND MAPLEWOOD SCHOOL :
 DISTRICT, ESSEX COUNTY, :
 RESPONDENT. :

SYNOPSIS

Pro se petitioner appealed the determination of the respondent Board that S.W. did not reside within the South Orange-Maplewood School District during the 2015-2016 school year. The Board alleged that S.W. was not residing at the address provided by the petitioner, and sought payment of tuition for the period of S.W.’s ineligible attendance. Petitioner contended that S.W. resided with her at an apartment on Tiffany Place in Maplewood which she rented from the owner’s daughter. The matter was transmitted to the Office of Administrative Law as a contested case.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(b)(2), petitioner has the burden of proof in a determination of residency; the residency investigation in this case was initially triggered when a District official received a telephone call from the owner of the house where petitioner claimed to rent an apartment, stating that no one by petitioner’s name lived at her property; multiple items of mail sent by the District to petitioner were returned with a notation that petitioner did not reside at the property address she had provided; petitioner claimed that she and her family leave the Maplewood address each morning between 5:00 and 5:30 to attend to petitioner’s elderly grandfather in Irvington; however, multiple attempts by residency investigators to confirm this claim were unsuccessful; and based on the evidence submitted by the petitioner in support of her residency claim, S.W. was not domiciled in the District while attending school there during the 2015-2016 school year. The ALJ concluded that S.W. was not entitled to receive a free public education in the South Orange-Maplewood School District; accordingly, the respondent Board is entitled to reimbursement for tuition costs in the amount of \$13,041 for the 2015-2016 school year.

Upon review of the record in this matter, the Commissioner concurred with the ALJ’s findings and conclusion. The Initial Decision was adopted as the final decision in this matter, and the petitioner was ordered to reimburse the Board for tuition in the amount of \$13,041; 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.

March 23, 2018

OAL DKT. NO. EDU 00020-16
AGENCY DKT. NO. 365-12/15

S.J., ON BEHALF OF MINOR CHILD, S.W., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE SOUTH : DECISION
ORANGE AND MAPLEWOOD SCHOOL :
DISTRICT, ESSEX COUNTY, :
RESPONDENT. :

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 domiciled within the South Orange and Maplewood School District for the 2015-2016 school year. The Commissioner further concurs with the ALJ's conclusion that the minor child was, therefore, not entitled to a free public education in the District's schools during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in the South Orange and Maplewood School District. Therefore, the Board is entitled to tuition reimbursement in the amount of \$13,041.00 for the entire 2015-2016 school year, during which time petitioner's minor child was ineligible to attend.

¹ The Commissioner was not provided with transcripts of the July 8, 2016 or November 27, 2017 hearings at the OAL.

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 \$13,041.00 for tuition costs incurred during the time period in which S.W. was ineligible to attend school in the South Orange and Maplewood School District. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 23, 2018

Date of Mailing: March 23, 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 00020-16
AGENCY DKT. NO. 365-12/15

S.J., ON BEHALF OF MINOR CHILD, S.W.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE SOUTH
ORANGE AND MAPLEWOOD SCHOOL
DISTRICT, ESSEX COUNTY,**

Respondent

S.J., petitioner, pro se

John P. Allen, Esq., for respondent (Schenck, Price, Smith & King, attorneys)

Record Closed: December 26, 2017

Decided: February 7, 2018

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner S.J., the mother of minor child S.W., appeals the determination of the Board of Education of the South Orange and Maplewood School District (the "Board") that S.W. did not reside within the South Orange-Maplewood school district in the 2015–2016 school year and that tuition reimbursement is required. The Board alleges that the

minor child S.W. was not residing at the address provided by the petitioner and seeks repayment of tuition. At issue is whether S.W. was entitled to be enrolled in the district for purposes of receiving a thorough and efficient public education free of charge for the 2015–2016 school year, pursuant to N.J.S.A. 18A:38-1.

On November 17, 2015, the Board notified S.J. that the child was ineligible to continue to attend school within the district. The petitioner filed a notice of appeal on or about December 7, 2015, and the Board filed an answer on December 15, 2015. On December 23, 2015, 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 first date of hearing was July 8, 2016, at which time counsel for the Board indicated that the individual petitioner claimed was her landlord would be interviewed, and if needed subpoenaed, and that the record should remain open until that was accomplished and a determination made as to whether any additional hearing days needed to be scheduled.

On December 13, 2016, the undersigned corresponded with counsel who had appeared for the Board on the initial hearing date, inquiring as to the status of this matter, and learned that new counsel was representing the Board. Based upon the availability of the parties and at the request of the district, the matter was scheduled for a second date of hearing on November 27, 2017. On that date there was no appearance on the part of petitioner. The District represented that the landlord had not been interviewed, and would be not subpoenaed, and declined to call any additional witnesses. Following receipt of copies of all exhibits that had been previously accepted into evidence on July 8, 2016, the record was closed.

Testimony on July 8, 2016

S.J.

S.J. testified that she brought all of her documentation and utility bills to the Board hearing on November 12, 2015, and thereafter received a letter indicating that there was “unclear evidence” as to whether she resided in the district. She learned that

an investigator had gone to her home and no one was there. She was asked to provide a copy of her lease reflecting the landlord's signature, and indicates that the Board also asked for the landlord's bank statements to show the deposits of rent, which she testified the landlord would not agree to provide. The landlord did agree to give her copies of her rent receipts, but not the bank statements.

S.J. testified that she works two jobs and her husband works overnight. Her grandparents are very sick and they reside at the Irvington/Maplewood border, and she takes care of them. She only has one vehicle so she has to stay over at their home at times, and "is at both places." She also testified that on August 1, 2016, she would be moving to P. Avenue in Maplewood and that her grandparents would be moving in with her. Her husband coaches Pop Warner in Maplewood, and she has lived there her whole life. She believes she is being singled out by the District.

S.W. began attending the District's school in mid to late September 2015. Prior to that S.J. resided in Irvington on F. Terrace but had problems with the landlord, and so moved to T. Street in Maplewood, and the landlord's daughter agreed to rent them her mother's house, and so they moved there. She testified that she can walk to her grandparents' house in Irvington.

S.J. testified that her daughter had an individualized education program in Irvington since fourth grade and has attention deficit hyperactivity disorder. She indicated that the Irvington child study team never kept in touch with her and she had to reach out to them, but that now in Maplewood her daughter has been doing better.

S.J. stated that at the hearing in district, she was told that mail sent to the Maplewood address she provided had been returned. She indicates, however, that she received all school mail at that address.

S.J. agreed that the medical-history form she completed on September 9, 2015, for S.W. lists her husband as a contact with an R. Avenue, Irvington, address. (R-10.) The student emergency-information form completed on the same date lists her husband at the Maplewood address. (R-11.) The registration checklist (R-29) indicates an

address at S. Place, South Orange, for S.W.'s father, who S.J. testified was living with his mother for a time at that address.

Adam Roselli

Adam Roselli is a licensed private investigator and has conducted residency and truancy investigations for the District since August 2014. Prior to becoming a private investigator, he was a police officer for twenty-eight years. He commenced handling the investigation in this matter on October 2, 2015, when asked to verify the Maplewood residency information provided. On that date, he rang all three doorbells and the first-floor resident, Ms. M.J., emerged and advised him that no one lived at that address by the name of S.J. or S.W. She also handed him mail that had arrived and said that the addressees did not live there. There were two letters in the mail he was given that had been sent from the District to petitioner that the first-floor resident had written on, indicating "Does not leave [sic] here, return to sender." (R-18.)

Mr. Roselli testified that he also returned to the property on October 7, 2015, at 7:50 a.m. (R-24) and rang all three doorbells again and knocked. A man emerged from the address who did not speak English. Mr. Roselli returned again on October 12, 2015, at 7:30 a.m. and once again there was no answer on any of the three floors, and he left an orange card in the mailbox with his contact information. Finally, he returned to the property on October 14, 2015, at 7:05 a.m. with the same result. Investigator Roselli testified that he spoke to S.W.'s stepfather on the telephone, who told him that petitioner, her husband, S.W., and S.J.'s other children, ages one, two, and fourteen, all leave the house between 5:00 and 5:30 a.m., and that S.J. leaves her children with their grandmother at R. Avenue while she is at work. He also indicated that petitioner takes care of her grandfather different hours of the day.

Also involved in this investigation was Investigator Morrison, who completed a residency-check form on November 23, 2015 (R-24) indicating that a residency check was conducted at 5:00 a.m. based on the information received from the stepfather and that there was no answer at any of the residences. Investigator Roselli returned again to the property at 7:10 a.m. on December 11, 2015, and there was no activity at the

house. He returned again on December 18, 2015, at 7:15 a.m. and there was no activity in or out of the house. On that occasion, he waited until 8:00 a.m.

Additional residency checks were conducted by Investigator Martin, who works with the witness, and noted that on February 25, 2016, at 6:50 a.m. the claimed residence at T. Place in Maplewood was surveilled and no one was there. Investigator Martin called and awakened S.J., who said she was at her grandfather's house at R. Terrace, Maplewood; however, at 7:05 a.m. there was no answer at that location and a subsequent call to S.J. went to voice mail. He also returned to the Maplewood address on March 3, 2016, at 6:00 a.m. and the house was dark, and there was no answer at the door or on S.J.'s telephone, and his call went to voice mail. Similarly, on March 8, 2016, there was no answer and the entire house was dark, and once again a voice-mail message was left.

Tiffani Barnes

Tiffani Barnes has been the registrar at the South Orange-Maplewood school district for fifteen years. Her responsibilities include enrolling new and returning students, maintaining a database, and handling residency issues. Prior to that she was an assistant to the superintendent. As the registrar, she has dealt with this case since soon after the start of the 2015 school year. Included in her duties is preparation of an activity list (R-17), which is prepared for the Board when there are residency issues. In this case, at the end of September she received a phone call from a Ms. M.J., who indicated that she owns the property at T. Place, Maplewood, and is receiving mail from the District for people who do not live there. An investigator went to the property and Ms. M.J. gave him the mail that the District had sent to petitioner, who Ms. M.J. reiterated did not live at the property. (R-18.) An investigator was sent to the house on multiple occasions to check, which is their standard operating procedure. She testified that if three residency checks do not confirm residency it may go before the Board or they may try one or more times to verify the address provided. She stated that she called the tax office to verify if the apartment is registered with the town and was advised that it was not registered because it is indicated as family-occupied. The town informed her that when an apartment is occupied by family it does not need to be

registered because there is no intent to rent it. The tax records confirmed that the property is owned by Ms. M.J. Petitioner provided a lease purportedly signed by R.J., who was the twenty-three-year-old daughter of the homeowner; however, a check with the building department revealed that the daughter is not the owner of the property, rather her mother is.

Ms. Barnes provided a residency-check form (R-24) to Investigator Morrison and he checked the house at 5:00 a.m. on November 23, 2015, and nobody was there. He also had S.J.'s phone number and called it, but received no answer. She indicated that they never did receive an accurate lease for any property. The Board hearing was scheduled for October because there was no concrete evidence of petitioner's residency. It was later moved to November. The family was notified regarding the hearing (R-19) and again regarding the new hearing date (R-20). Petitioner had indicated at the residency hearing (R-22) that she deposited cash or money orders directly into the landlord's bank account, and as a result the Board asked for statements to confirm those deposits, which were never provided. Thereafter a removal letter was sent (R-21), as the Board had never received the information it asked petitioner to provide. Petitioner was also advised that S.W. could remain in school pending the appeal. (R-23.)

Ms. Barnes testified that often residency investigations are triggered by attendance issues or something a student might say. The District uses the PowerSchool Program, and S.W.'s attendance record raised issues. (R-25.) Those records indicate that S.W. had fifty-seven unexcused late arrivals—nearly one-third of the 180-day school year—as well as ten unverified absences, according to the PowerSchool printout dated July 5, 2016.

FINDINGS OF FACT

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

1. The Board had good cause to question the residency of S.W. At the end of September 2015, the District registrar received a telephone call from Ms. M.J., the owner of the property where S.J. claimed to reside, T. Place, Maplewood, New Jersey. Ms. M.J. informed the registrar that petitioner did not live at that address.
2. S.J. was provided notice of the Board's challenge to residency in November 2015.
3. Petitioner initially provided what purported to be a lease between herself and R.J., daughter of Ms. M.J., dated August 26, 2015. Subsequent to the Board hearing on November 12, 2015, petitioner supplied a different lease purporting to be between herself and Ms. M.J., dated November 17, 2015. Petitioner stated at the Board hearing that she lives on the second floor at that address, and that she leased the apartment from R.J.
4. Surveillance conducted over several days at T. Place, Maplewood, New Jersey, revealed that neither S.J. nor S.W. resided there.
5. Multiple items of correspondence mailed to petitioner and delivered to the Maplewood address were returned with the notification, "Does not leave [sic] here, return to sender."
6. Residency investigators for the District attempted to make contact with petitioner at the address she provided but were unable to do so. No proof of residency at the address in question was provided.
7. Petitioner provided a Comcast cable bill for the period of June 26, 2016, through July 25, 2016, which listed numerous reactivation charges. She also provided a vehicle registration valid through March 2017; a Motor Vehicle Commission restoration-of-license form dated March 6, 2016; and a New Jersey Turnpike toll and fee payment request for an unpaid toll from March 22, 2016.

LEGAL ANALYSIS AND CONCLUSIONS

The issue in this appeal is whether S.W. had been a domiciled student in the South Orange and Maplewood school district during the 2015–2016 school year.

Public schools are required to provide a free education to individuals between the ages of five and twenty years in certain circumstances, including individuals who are domiciled within the school district. N.J.S.A. 18A:38-1(a). 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 the domicile of the parent, custodian, or guardian. P.B.K. ex rel. minor child E.Y. v. Bd. of Educ. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001). Thus, a child would routinely attend school in the district where his or her parents live. The petitioner has the burden of proof in a determination of residency eligibility. N.J.S.A. 18A:38-1(b)(2).

From the evidence submitted, it is clear that S.W. has not been domiciled in the district while attending school there. The District registrar received a telephone call from the owner of the property that petitioner claimed to reside at, indicating that no one by that name lived at her property. Multiple items of mail were returned to the District with a notation thereon that petitioner did not reside at the property address she provided.

The petitioner had indicated at the Board hearing on November 12, 2015, that she and her family leave the Maplewood address each morning between 5:00 and 5:30 a.m. and go to petitioner's grandfather's house in Irvington to care for him. However, multiple attempts by residency investigators to locate anyone at the Maplewood property, even at 5:00 in the morning, were unsuccessful. Conflicting leases were submitted purporting to show that petitioner was leasing the Maplewood property; however, no proof of payment of rent was provided.

N.J.A.C. 6A:22-3.1(a)(1) provides as follows:

A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district.

I **FIND** that S.W. was not domiciled in the district during the 2015–2016 school year. Accordingly, I **CONCLUDE** that S.W. was not entitled to attend school in the district and receive a free public education there during that time frame pursuant to N.J.S.A. 18A:38-1(a).

A school board is entitled to recover tuition from a parent or guardian of a child found ineligible to attend a school in its district. N.J.S.A. 18A:38-1(b)(2). S.W. was not entitled to a free public education in the South Orange-Maplewood district based upon the above. Tuition for school year 2015–2016 was \$13,041. Accordingly, respondent is entitled to reimbursement from S.J. for the cost of providing an education to S.W. in the sum of \$13,041 for the 2015–2016 school year.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that the petition of petitioner, S.J., be and is hereby **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that S.J. reimburse respondent the total sum of \$13,041 for tuition costs associated with the attendance of S.W. in the South Orange and Maplewood school district for the entire 2015–2016 school year.

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.

February 7, 2018

DATE



LESLIE Z. CELENTANO, ALJ

Date Received at Agency:

February 7, 2018

Date Mailed to Parties:
dr

APPENDIX

Witnesses

For Petitioner:

S.J.

For Respondent:

Adam Roselli

Tiffani Barnes

Exhibits

For Petitioner:

P-1 Copy of Vehicle Registration and Insurance Card

P-2 Comcast bill

P-3 MVC Restoration Notice

P-4 NJ Turnpike Authority First Notice of Enforcement Action dated April 1,
2016

P-5 Residential Lease

For Respondent:

R-1 Not in Evidence

R-2 Not in Evidence

R-3 Registration Form, September 9, 2015

R-4 Home Language Survey, September 9, 2015

R-5 Not in Evidence

R-6 Statement of Domicile

R-7 Official Records Request Form, September 9, 2015

R-8 Not in Evidence

R-9 Not in Evidence

R-10 Medical History Form, September 9, 2015

- R-11 Student Emergency Information, September 9, 2015
- R-12 Not in Evidence
- R-13 Letter from Dr. John J. Ramos to Ms. J.
- R-14 Lease, August 26, 2015
- R-15 Not in Evidence
- R-16 Not in Evidence
- R-17 Activity List
- R-18 Copies of returned mail
- R-19 Residency Hearing Notice, October 23, 2015
- R-20 Residency Hearing Notice, November 2, 2015
- R-21 Residency Hearing Determination, November 17, 2015
- R-22 Notes from Residency Hearing
- R-23 Letter to Ms. J. from Dr. Ramos, December 8, 2015
- R-24 Residency Verifications Performed by Officers
- R-25 Attendance List View, July 5, 2016
- R-26 Not in Evidence
- R-27 Demographics/Contacts, T.J., July 5, 2016
- R-28 Demographics/Contacts, T.J., December 2, 2014
- R-29 Registration Materials, T.J., December 2014
- R-30 Not in Evidence
- R-31 2015–16 Tuition Rates