

J.G. and D.G. on behalf of :
minor child, J.T.G., :
 :
 PETITIONERS, :
 : COMMISSIONER OF EDUCATION
 V. :
 : DECISION
 BOARD OF EDUCATION OF THE :
 BOROUGH OF POINT PLEASANT, :
 OCEAN COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioners filed a *Pro Se* residency appeal, challenging the respondent Board’s determination that their son, J.T.G. is not entitled to a free public education in the Point Pleasant schools because the family no longer resides in the district. Petitioners contend that their move out of Point Pleasant following the sale of their house on March 19, 2010 is temporary and was based on personal and financial setbacks beyond their control; that they plan to re-establish residency in Point Pleasant at some undetermined point in the future; and that they are homeless and living temporarily with D.G.’s parents in Brick Township. Respondent Board filed a counterclaim seeking payment of tuition for the number of days J.T.G. attended school subsequent to March 19, 2010.

The ALJ found that: it is undisputed that petitioners are no longer domiciled in Point Pleasant, and have endured significant personal and financial hardship; the issue in this case is whether J.T.G. is homeless for purposes of educational jurisdiction; petitioners bear the burden of proof to show that they are residing with relatives out of necessity; no evidence exists to show that petitioners’ temporary living situation was an option undertaken in a crisis of immediacy, or that other options were thoroughly explored; and petitioners have failed to prove that J.T.G. is homeless. Accordingly, the ALJ concluded that J.T.G. was not entitled to a free public education in Point Pleasant once his family moved out of the district, and that the Board is entitled to reimbursement of tuition for the 62 days that J.T.G. attended school after March 19, 2010, at the daily tuition rate of \$59.56.

Upon a full and independent review of the record, the Commissioner adopted the ALJ’s findings that petitioners are not homeless and that – once the family moved from the district – J.T.G. was not entitled to a free public education in Point Pleasant schools, and ordered the petitioners to remit tuition in the amount of \$3692.72 to the respondent Board. The petition was dismissed.

<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>

OAL DKT. NO. EDU 4688-10
AGENCY DKT. NO. 95-5/10

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This case was initially filed as a residency dispute, wherein petitioners alleged:

We sold our house [in Point Pleasant] on March 19, 2010 and moved in with [D.G.'s] parents [in Brick] temporarily due to illness and financial hardship. We are actively looking to relocate back into Point Pleasant Boro and the Nellie Bennett school district. (Petition dated May 14, 2010, at 1)

However, after the matter was transmitted to the OAL, an examination of the facts revealed that it was unlikely that petitioner's circumstances would allow an expeditious return to residency in Point Pleasant, and that the family could not be regarded as domiciled there.

More specifically, after selling their house in Point Pleasant and moving in with D.G.'s parents in Brick, J.G. found a job in northern New Jersey. Petitioners wrote a letter dated April 8, 2010 to Vincent Smith, Superintendent of the Point Pleasant Schools (R-2), stating:

In all honesty as much as we want to stay in Point Pleasant as we have been for 6 years. [sic] We will not be able to Realistically my kids need to see their dad so moving closer to his work [at Picatinny Arsenal in Sparta, NJ] is what is best for all of us.

In addition, when asked – at an April 26, 2010 hearing before the respondent Board of Education – whether the family would consider moving back to Point Pleasant for the remainder of the 2009-2010 school year, petitioner D.G. explained that they would continue to stay at her parents’ home because she was still monitoring her own health issues. (T at 17¹) Further, at the August 10, 2010 OAL hearing, petitioners were still living in Brick and J.G. testified that he had not considered looking for a rental in Point Pleasant. (Initial Decision at 6)

Thus, while petitioners might hope to return to Point Pleasant some day, various circumstances beyond their control, together with decisions that they have made about their living arrangements have combined to undermine the realization of that hope in the near term. Nor can petitioners’ domicile be assigned to Point Pleasant based upon such a hope.

Perhaps in light of the foregoing, petitioners argued in the OAL that the sale of their house and their move into the home of D.G.’s parents rendered the family homeless. Thus, they reasoned that the respondent school district – as J.T.G.’s last school district before the sale of their house – should be responsible for J.T.G.’s education and should allow J.T.G. to continue to attend the Nellie Bennett School.

Normally, the initial determination in a dispute about homelessness is made by the County Superintendent of Schools. *N.J.A.C.* 6A:17-2.8. Here, however, the claim of homelessness was apparently raised subsequent to the transmission of this case to the OAL. For purposes of expediency, the Administrative Law Judge (ALJ) adjudicated the issue. Upon review of the record and Initial Decision,² and for the reasons set forth in the Initial Decision, the Commissioner adopts the ALJ’s findings that 1) petitioners are not homeless and 2) once the family moved from the district, J.T.G. was not entitled to a free public education in Point Pleasant schools.

¹ T designates the transcript of the April 26, 2010 Board of Education hearing concerning this matter.

² No transcript of the hearing in the Office of Administrative Law (OAL) has been provided and no exceptions have been filed.

The record reveals that petitioners moved from the Point Pleasant school district on March 19, 2010 (Respondent's Exhibit R-2) and that respondent's *per diem* tuition rate for J.T.G.'s grade was \$59.56 in the 2009-2010 school year. (Respondent's Exhibit R-3) The Commissioner consequently finds that petitioners owe respondent \$3692.72. Accordingly, the petition is hereby dismissed and petitioners are ordered to remit that amount to respondent.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: _____

Date of Mailing: _____

³ The 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)*.