

T.P., ON BEHALF OF MINOR CHILDREN, :  
A.P., M.P., AND J.P., :  
: PETITIONER, :  
: COMMISSIONER OF EDUCATION  
V. :  
: DECISION  
BOARD OF EDUCATION OF THE TOWNSHIP :  
OF MIDDLETOWN, MONMOUTH COUNTY, :  
: RESPONDENT. :

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SYNOPSIS

In February 2017, *pro se* petitioner appealed the determination of the respondent Board that her children are ineligible for a free public education in respondent’s school district. Petitioner admitted in her appeal that she had been domiciled at an address in Keansburg, New Jersey, since the family’s eviction from their previous home in Middletown Township in April 2016. The Board filed a counterclaim for tuition. A hearing in this matter was held on August 1, 2017.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a), children between the ages of five and twenty years old are entitled to a free public education in the school district in which they are domiciled; the domicile of an unemancipated child is that of her parent, custodian or guardian; here, petitioner testified that on April 1, 2016 – facing eviction subsequent to foreclosure on the family home in Middletown Township – she entered into a lease for one unit of a two-family house in Keansburg; petitioner and her children had lived at the Keansburg address for sixteen months at the time of the hearing, and are therefore considered to be domiciled in Keansburg; petitioner’s contention that her children should be permitted to continue to attend the Board’s schools under the Educational Stability Act, *N.J.S.A.* 18A:7B-12(c), is without merit as petitioner offered no evidence that her intent was to move back to Middletown; rather, petitioner displayed an intent to remain in Keansburg as she stated that it was more affordable and more convenient to the location of her children’s Middletown school than her former Middletown address had been. The ALJ concluded that petitioner’s children were ineligible to receive a free education in the Middletown Township School District for the 2016-2017 school year, and that the Board is entitled to reimbursement for tuition in the total amount of \$39,178.80.

Upon review, the Commissioner concurred with the ALJ’s finding that the children were not domiciled in Middletown for the 2016-2017 school year, and were not entitled to a free education in the District during that time period. Further, the Commissioner concurred with the ALJ’s assessment of the total tuition owed to the Board, but modified the ALJ’s calculation of tuition to correct a typographical error. Accordingly, the Initial Decision of the OAL was adopted as the final decision, as modified above, and petitioner was directed to reimburse the Board in the amount of \$39,178.80 for the period of ineligible attendance of T.P.’s children in the Middletown Township Schools. 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.

October 2, 2017

OAL DKT. NO. EDU 3915-17  
AGENCY DKT. NO. 38-2/17

T.P., ON BEHALF OF MINOR CHILDREN, :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.<sup>1</sup> The parties did not file exceptions.

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that A.P., M.P., and J.P. were not domiciled in Middletown for the 2016-2017 school year, and were not entitled to a free education in the District during that time period. The Commissioner further concurs with the ALJ's assessment of the total tuition owed to the Board; however, the calculation for tuition is modified as set forth below.<sup>2</sup>

Pursuant to *N.J.S.A.* 18A:38-1b and *N.J.A.C.* 6A:22-6.3, the Commissioner shall assess tuition against petitioner for the time period during which A.P., M.P., and J.P. were ineligible to attend the District's schools. The Commissioner modifies the ALJ's calculation of tuition owed to the Board for A.P.'s ineligible attendance from \$11,806.20 to \$13,726.80 (\$76.26

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<sup>1</sup> The Commissioner was not provided with a transcript of the August 1, 2017 hearing at the OAL.

<sup>2</sup> The ALJ's assessment of the total tuition due and owing to the Board for all three children – \$39,178.80 – is correct, but there appears to be a typographical error in the Initial Decision pertaining to the cost of tuition for A.P.'s ineligible attendance in the District.

per day for 180 days). The Initial Decision erroneously listed the cost of A.P.'s attendance at \$65.59 per day for 180 days, when in fact the tuition is \$76.26 per day for 180 days.

Accordingly, the Initial Decision of the OAL – as modified herein – is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$39,178.80 for tuition costs incurred for the 2016-2017 school year, during which time A.P., M.P., and J.P. were ineligible to attend school in Middletown.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 2, 2017

Date of Mailing: October 3, 2017

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<sup>3</sup> 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 3915-17

AGENCY DKT. NO. 38-2/17

**T.P. ON BEHALF OF MINOR CHILDREN,  
A.P., M.P. AND J.P.,**

Petitioner,

v.

**TOWNSHIP OF MIDDLETOWN BOARD  
OF EDUCATION, MONMOUTH COUNTY,**

Respondent.

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**T.P.**, petitioner, appearing pro se

**Jeffrey R. Merlino**, Esq. for respondent (Sciarrillo Cornell Merlino McKeever &  
Osborne, LLC)

Record Closed: August 4, 2017

Decided: August 18, 2017

BEFORE: **JEFFREY N. RABIN**, ALJ

**STATEMENT OF THE CASE**

Petitioner, T.P., the mother of minor children A.P., M.P. and J.P., has challenged the determination made by the respondent, Board of Education of the Township of Middletown, Monmouth County, that her children were not entitled to a free public

education in Middletown Township because petitioner and her children were not domiciled in the Middletown Township School District. Respondent filed a counterclaim seeking reimbursement of tuition for the time period A.P., M.P. and J.P attended school in Middletown Township, that being one hundred eighty (180) days each during the 2016-2017 school year, for a total of \$39,178.80, and seeking a finding that petitioner is responsible to pay tuition for her three children if they continue attending Middletown Township schools during school year 2017-2018 while they are domiciled in a municipality other than Middletown Township, New Jersey.

### **PROCEDURAL HISTORY**

On or about January 2, 2017, respondent notified the petitioner that her three children, A.P., M.P. and J.P, were ineligible to receive free educations in Middletown Township School District due to non-residency. Petitioner, T.P., filed a Pro Se Residency Appeal with the Department of Education on February 24, 2017. On March 15, 2017, respondent filed an Answer and Counterclaim with the Department of Education. The Department of Education transmitted this matter to the Office of Administrative Law (OAL) on March 21, 2017, for hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Each party requested and was granted a single adjournment of the hearing. Upon due notice to all parties, the hearing was scheduled and heard on August 1, 2017. The record remained open for receipt of additional documentation, which was received on August 4, 2017, and the record closed on that date.

### **FINDINGS OF FACT**

The facts of the case are not in dispute:

1. Prior to April 1, 2016, petitioner and her three children were domiciled in Middletown Township, New Jersey, and two of the children, M.P. and A.P., attended school in Middletown Township.
2. On April 1, 2016, facing eviction subsequent to a foreclosure on their home in Middletown Township, petitioner entered into a lease for one unit in a two-family residence at 109 Lawrence Avenue, Keansburg, New Jersey, a location closer to petitioner's children's schools in Middletown Township. This is the address where petitioner and her children continue to be domiciled. Petitioner's Pro Se Residency Appeal certified that her address is "109 Lawrence Avenue, Keansberg [sic], NJ." (Exhibit R-1.)
3. After moving to Keansburg Township, petitioner enrolled her son J.P. in kindergarten in Middletown Township, which he attended for the entire 2016-2017 school year.
4. After moving to Keansburg Township, petitioner's son, M.P., attended fifth grade in Middletown Township for the entire 2016-2017 school year, and her son, A.P., attended ninth grade in Middletown Township for the entire 2016-2017 school year.

## **LEGAL ANALYSIS AND CONCLUSION**

### *Residency*

The issue is whether petitioner's three children are eligible to attend respondent's public schools free of charge in accordance with N.J.S.A. 18A:38-1. If not, the issues are whether respondent's request for tuition reimbursement for the school year 2016-2017 should be granted, and whether petitioner is responsible to pay tuition for her children to remain enrolled in Middletown Township schools while the family is domiciled in a municipality other than Middletown Township, New Jersey.

Any child between the ages of five and twenty years old is entitled to a free public education in the school district in which he is domiciled. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). See V.R. ex rel A.R. v. Hamburg Bd. of Educ., 2 N.J.A.R. 283, 287 (1980), aff'd, State Bd., 1981 S.L.D. 1533, rev'd on other grounds sub nom.; Rabinowitz v. N.J. State Bd. of Educ., 550 F. Supp. 481 (D.N.J. 1982) (New Jersey requires local domicile, as opposed to mere residence, in order for a student to receive a free education).

A student is domiciled in 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); State v. Benny, 20 N.J. 238, 250 (1955); In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), aff'd, 311 N.J. Super. 589 (App. Div.), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051, 119 S. Ct. 1357, 143 L. Ed. 2d 518 (1999).

The domicile of an unemancipated child is that of his parent, custodian or guardian. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000), aff'd, 167 N.J. 55 (2001); 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). A child may also be considered domiciled in a school district if he lives with an adult domiciled in that school district, as long as the child is financially supported by that adult as if he were their own child, upon submission of a sworn affidavit to the board of education. N.J.S.A. 18A:38-1(b)(1).

A student may attend school in a district in which he is not domiciled, 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. A superintendent or administrative principal may also have a non-domiciled student removed from that school, on application to the board of education. N.J.S.A. 18A:38-1(b)(2).

When 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 for 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.

Petitioner stated that as of April 1, 2016, she and her family became residents of Keansburg, New Jersey, and were no longer residents of Middletown, New Jersey. Petitioner testified that on April 1, 2016, facing eviction subsequent to a foreclosure on their home in Middletown Township, she entered into a lease for one unit in a two-family residence at 109 Lawrence Avenue, Keansburg, New Jersey. This is where petitioner and her three children have lived for sixteen months, and where they continue to live. Petitioner's Pro Se Residency Appeal application to the Commissioner of Education dated February 24, 2017, handwritten by petitioner, certifies that she and her family have an address of "109 Lawrence Avenue, Keansberg [sic], NJ."<sup>4</sup> Because petitioner is domiciled in Keansburg, and her children are living with her and supported by her in Keansburg, her children are considered domiciled in Keansburg. In re Unanue, supra.

Petitioner sought to rely on the Educational Stability Act, N.J.S.A. 18A: 7B-12(c). That statute permits free public education in the child's last school district when a child has been placed in a new resource family home, or a child's parent moves to a new district temporarily due to homelessness. That statute is not determinative here, as petitioner's children were not homeless; as residents at 109 Lawrence Avenue in Keansburg, they did not lack a fixed, regular, adequate residence. M.O'K. v. Bd. of Educ. of Cresskill, 2016 N.J. Super. Unpub. LEXIS 2046. Additionally, that statute does not apply because petitioner did not move to a different school district temporarily; she

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<sup>4</sup> Petitioner's written request for an adjournment of this Hearing, dated June 13, 2007, also indicated that her current mailing address was 109 Lawrence Avenue, Keansburg, New Jersey.



entered into a formal lease for a home in Keansburg, New Jersey, and has now resided in that home for more than sixteen months.

The acts, statements and conduct of the individual, as viewed in light of all circumstances, determine a person's true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959). The parent/petitioner has the burden of proving domicile by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)(2). In the within matter, petitioner did not challenge the respondent's conclusion that she was domiciled in Keansburg. Further, petitioner offered no evidence that her intent was to move back to Middletown; rather, petitioner displayed an intent to remain in Keansburg: she stated that she moved to Keansburg because it was more affordable; she executed a year-to-year lease for property in Keansburg; she has now lived in Keansburg for over sixteen months; and she noted that her Keansburg address is more convenient because it is located closer to her children's schools than her former Middletown address.

Additionally, one of the purposes of the Educational Stability Act is to ensure that a child's school year is not interrupted by them being moved from one school district to another within a school year. It is noted that while petitioner moved out of Middletown Township in April 2016, her children remained in Middletown schools through the end of the school year, and respondent has not made a claim for tuition for the last three months of the 2015-2016 school year. Accordingly, petitioner has already been afforded whatever protections and benefits she might have received pursuant to the Educational Stability Act.

Accordingly, I **CONCLUDE** by a preponderance of the credible evidence that petitioner and her three children changed their domicile to Keansburg Township, New Jersey, in April 2016, that they were not domiciled in the Middletown Township, New Jersey, School District during the 2016-2017 school year, and that therefore they were ineligible to receive a free public school education in that school district for that time period. Additionally, I **CONCLUDE** by a preponderance of the credible evidence that petitioner and her three children are not currently domiciled in the Middletown

Township, New Jersey, School District, and that therefore they are not currently entitled to a free public school education in that school district.

Tuition Reimbursement

The respondent Board of Education asserts that it is entitled to be reimbursed for tuition for the period of A.P., M.P. and J.P.'s ineligible enrollment in its schools. Where, as here, the evidence does not support the petitioner's claim for a free public education, 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) similarly 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.

Tuition for J.P.'s attendance in kindergarten in Middletown Township was \$65.59 per day, for 180 days, for a total of \$11,806.20 for 2016-2017. Tuition for M.P.'s attendance in fifth grade in Middletown Township was \$75.81 per day, for 180 days, for a total of \$13,645.80 for 2016-2017. Tuition for A.P.'s attendance in ninth grade in Middletown Township was \$65.59 per day, for 180 days, for a total of \$11,806.20 for 2016-2017. Accordingly, the total of out-of-district tuition for petitioner's three children for 2016-2017 was \$39,178.80.

Based upon the facts and the legal principles cited above, I **CONCLUDE** that petitioner's children were ineligible to receive a free education in the Middletown

Township School District for the school year 2016-2017, and that respondent is entitled to reimbursement for the costs of tuition in the amount of \$39,178.80.

I further **CONCLUDE** that petitioner's children will continue to be ineligible to receive a free education in the Middletown Township School District as long as they remain domiciled in a municipality other than Middletown Township, New Jersey.

### **ORDER**

Based on the foregoing, respondent's determination that petitioner's children were ineligible for a free education in Middletown Township School District during the 2016-2017 school year is hereby **AFFIRMED**. It is **ORDERED** that petitioner, T.P., pay to respondent, the Board of Education of the Township of Middletown, tuition in the amount of \$39,178.80 for the 2016-2017 school year. It is further **ORDERED** that petitioner shall be responsible to pay tuition to respondent if petitioner's children continue to attend Middletown Township, New Jersey, schools while they remain domiciled in a municipality other than Middletown Township, New Jersey.

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.

August 18, 2017  
DATE

  
\_\_\_\_\_  
**JEFFREY N. RABIN, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

JNR/cb

**APPENDIX**

**WITNESSES**

**For petitioner:**

T.P., appearing pro se

A.P.

**For respondent:**

None

**EXHIBITS**

**For petitioner:**

None

**For respondent:**

R-1 Agency Packet