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| H.M., ON BEHALF OF MINOR CHILDREN, S.K. AND C.K., | : | |
| | : | |
| PETITIONER, | : | COMMISSIONER OF EDUCATION |
| V. | : | |
| | : | DECISION |
| BOARD OF EDUCATION OF THE TOWNSHIP OF EWING, MERCER COUNTY, | : | |
| | : | |
| RESPONDENT. | : | |

SYNOPSIS

Petitioner appealed the determination of the respondent Board that her children are ineligible for a free public education in respondent’s school district. Petitioner and her children resided in Ewing prior to February 2014, when they were evicted from a rental property. H.M. acknowledged that her family then moved to an address on Carteret Avenue in Trenton, but contended that as of September 2015, they resided on Steinway Avenue in Ewing with H.M.’s sister. The Board asserted that the results of a residency investigation showed that H.M. and her family continued to reside in Trenton through January 19, 2016. The Board sought tuition for the period of ineligible attendance by H.M.’s children.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1, petitioner has the burden of proof in a determination of residency ineligibility; the Board’s residency investigation revealed that H.M.’s children were transported to school in Ewing from the Trenton address where H.M. claimed to have resided from February 2014 to September 2015; the testimony given by H.M. and her sister, L.M., regarding H.M.’s residency lacked credibility; and while H.M. may have desired to be in the Ewing School District so that her children could complete their education, she did not maintain residency in the district during the time period for which the Board seeks tuition reimbursement. The ALJ concluded that petitioner did not meet her burden of proof that the Board acted arbitrarily or capriciously in determining to remove H.M.’s children from the district schools. Accordingly, the ALJ denied H.M.’s petition and ordered that the Board is entitled to reimbursement from petitioner in the total amount of \$10,366.62 for the period of ineligible attendance of H.M.’s children.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and petitioner was directed to reimburse the Board in the amount of \$10,366.62 for tuition costs incurred during the period when S.K. and C.K. were ineligible to attend Ewing 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.

OAL DKT. NO. EDU 01720-16
AGENCY DKT. NO. 4-1/16

H.M., ON BEHALF OF MINOR CHILDREN, :
S.K. AND C.K., :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 : DECISION
 BOARD OF EDUCATION OF THE TOWNSHIP :
 OF EWING, MERCER 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 a domiciliary of Ewing from September 30, 2015 through January 19, 2016. The Commissioner further concurs with the ALJ's conclusion that the minor children were, therefore, not entitled to a free public education in the District's schools during this 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 children were ineligible to attend school in Ewing. Therefore, the Board is entitled to tuition reimbursement in the amount of \$10,366.62 (\$75.20 per day for 66 days for S.K. and \$81.87 per day for 66 days for C.K.) for the time period of September 30, 2015 through January 19, 2016, during which petitioner's minor children were ineligible to attend.

¹ The Commissioner was not provided with a transcript of the November 21, 2016 hearing 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 \$10,366.62 for tuition costs incurred during the time period that S.K. and C.K. were ineligible to attend school in Ewing. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: October 13, 2017

Date of Mailing: October 13, 2017

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 01720-16

AGENCY DKT. NO. 4-1/16

**H.M. ON BEHALF OF MINOR
CHILDREN S.K. AND C.K.,**

Petitioner,

v.

**BOARD OF EDUCATION
TOWNSHIP OF EWING,
MERCER COUNTY,**

Respondent.

H.M., petitioner, pro se

Joseph L. Roselle, Esq. for respondent (Schenck, Price, Smith & King, LLP,
attorneys)

Record Closed: March 2, 2017

Decided: August 30, 2017

BEFORE **JOSEPH A. ASCIONE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter involves a residency dispute and a claim for reimbursement of tuition from September 30, 2015 through January 19, 2016, for the two minor children of H.M. Petitioner requested a hearing. The Ewing Township Board of Education, Mercer County (District) seeks reimbursement of a total of \$10,366.62 for sixty-six school days

for each of H.M.'s children times the per diem rate for each school they attended while not residing in the district.

On February 2, 2016, this matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On November 21, 2016, the OAL conducted a hearing. The parties were afforded the opportunity to submit post-hearing closing memoranda. Respondent made a submission and the record closed on March 2, 2017. Extensions of time to file the Initial Decision were granted by the Acting Director and Chief Administrative Law Judge.

FACTUAL DISCUSSION AND FINDINGS

Prior to February 2014, H.M. and her children resided in Ewing Township, Mercer County. In February 2014, H.M. and her children no longer resided on Lower Ferry Road, Ewing. She denied homelessness. In September 2015, H.M. claimed her residence at XX Steinway Avenue, Ewing. This address is H.M.'s sister's address in Ewing. She claims her sister accommodates her residence there without a lease or payment. H.M. acknowledges there are no household bills in her name at the Steinway Avenue address. H.M. testified that a few days a week her children either shared a room or slept on the couch at the Steinway Avenue address. From February 2014 through September 2015, H.M. claims to have resided at XXX Carteret Avenue in Trenton. H.M. did not notify the District of her Trenton address, however, she registered her children in September 2014 and September 2015 as residing in Ewing.

L.M., H.M.'s sister, testified that she lived with her at times over the past ten years. They had confusion regarding the residency. The address at XX Steinway Avenue is a two-family house. Also residing there were L.M.'s son and his fiancée and their two children. H.M. fully moved out as of February 2016. She claimed the investigation only occurred for ten days.

David Mikalauskas, the district attendance and residency officer, noted the February 2014 eviction from the Lower Ferry Road address when he first started to investigate petitioner's residency. They did not take H.M. off the rolls of residents until the 2015/16 school year, at which time an investigation commenced. He testified that the daily rates for Ewing High School and Fisher Middle School reimbursement is based on the annual amount of \$13,762 and \$14,984 respectively. There are 183 school days in a year. v So the per diem reimbursement amount is \$75.20 and \$81.87, respectively. He testified that the time period the district seeks reimbursement is sixty-six days from September 30, 2015 through January 19, 2016. These amounts total \$4,963 and \$5,403.42, respectively for a total amount for both students of \$10,366.62.

Peter L. Manetto, Jr. testified to part-time employment with the District. He commenced an investigation of H.M.'s residence on September 30, 2015, at XXX Carteret Avenue, Trenton. He surveilled the location on ten separate days through November 3, 2015. H.M.'s children on nine of the ten surveillance days left the Carteret Avenue property and arrived at the Ewing High School and Fisher Middle School driven by H.M. on at least six of those occasions in a vehicle registered in her name showing the address at Steinway Avenue, Ewing.

H.M. and her sister tried to explain that the children reside at the Steinway address, however, this tribunal cannot accept their testimonies as explanations for the facts that on nine of ten occasions during an approximate twenty-five school day period H.M.'s children traveled from the Carteret Avenue location to the Ewing schools.

After consideration of the documentary evidence and testimony of the witnesses, I **FIND** as **FACT** the following:

1. Prior to February 2014, H.M. and her children resided in Ewing Township, Mercer County.
2. H.M.'s children respectively attended Fisher Middle School and Ewing High School during the time period reimbursement is sought.

3. H.M. acknowledged that from February 2014 through September 2015, H.M. resided at XXX Carteret Avenue in Trenton.
4. H.M. did not notify the District of her Trenton address, however, she registered her children in September 2014 and September 2015 as residing in Ewing.
5. The district commenced an investigation at sometime in September 2015 of the residency of H.M. and her children.
6. The investigation (R-1) reveals that nine of twenty-five school days during the period from September 30, 2015 through November 4, 2015, H.M.'s children were dropped off at the Ewing schools from a location in Trenton where she claims to have resided from February 2014 through September 2015.
7. H.M.'s children resided in Trenton from September 30, 2015, until she removed herself from the district on January 16, 2016, a period of sixty-six school days.
8. Respondent's reimbursable tuition for Ewing High School is \$75.20 per day, for Fisher Middle School is \$81.87 per day.
9. The time period for which tuition is sought is sixty-six school days
10. The total reimbursable tuition is \$5,403.42 for C.K.; and \$4,963.20 for S.K., for a total of \$10,366.62.

LEGAL DISCUSSION

Petitioner has the burden of proof in a determination of residency ineligibility N.J.S.A. 18A:38-1. Here petitioner complains of the finding of the District but cannot dispute the investigative report that a substantial time in October 2015, her children were taken to the school from out of the district. The location was the residence petitioner claimed she resided at until the start of the investigation. While she may have desired to be in the Ewing District to finish her children's education, she did not maintain residency within the district during the time period the District seeks reimbursement.

CONCLUSION

I **CONCLUDE** petitioner has not met her burden of proof that the District acted arbitrarily or capriciously in determining to remove H.M. from the residency roll of Ewing School District and seek tuition reimbursement during the time from September 30, 2015 through January 19, 2016.

I **CONCLUDE** petitioner has not met her burden of proof that she resided within the district during the time from September 30, 2015 through January 19, 2016.

ORDER

It is **ORDERED** that the petition is **DENIED** based upon petitioner's failure to meet her burden of proof that the District acted arbitrarily or capriciously in disputing H.M.'s residency and entitlement to reimbursement.

It is **ORDERED** the respondent is entitled to be reimbursed from petitioner the amount of \$10,366.62 for tuition for her two children for a total of sixty-six days.

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 30, 2017 _____

DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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APPENDIX
LIST OF WITNESSES

For Petitioner:

H.M.

L.M., sister of parent petitioner

For Respondent:

David Mikalauskas, Residency Officer, Ewing Township BoE

Peter L. Manetto, Jr., Residency Investigator, Ewing Township BoE

LIST OF EXHIBITS

For Petitioner:

None

For Respondent:

R-1 Investigative Report September 30 through November 3, 2015