

J.G., on behalf of minor children,	:	
C.G. AND E.G.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF RANDOLPH,	:	
MORRIS COUNTY,	:	
	:	
RESPONDENT.	:	
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SYNOPSIS

*Pro-se* petitioner appealed the determination of the respondent Board that his children were not residents of Randolph Township during the 2016-2017 school year, and therefore were not eligible for a free public education in respondent’s school district. The Board alleged that the children were not residing at the address provided by petitioner, but rather at a home in Mt. Olive, and accordingly sought repayment of tuition for the 2016-2017 school year.

The ALJ found, *inter alia*, that: petitioner enrolled his children in Randolph schools at the beginning of the 2016-2017 school year as non-residents, and was advised at the time that he was required to secure a residence in the school district within one month in order to avoid being assessed tuition; upon request, the Board granted petitioner an extension of an additional month to find a residence in Randolph; subsequently, petitioner rented an apartment in Randolph effective November 19, 2016 and provided rental payment receipts through January 2017; J.G. closed on a house in Mt. Olive on December 9, 2016, and began residing there effective January 7, 2017; pursuant to *N.J.S.A. 18A:38-1(a)* and *N.J.A.C. 6A:22-3.1(a)*, children between the ages of five and twenty years old are entitled to a free public education in the district in which they reside; petitioner bears the burden to prove that his children were domiciled in Randolph for the 2016-2017 school year; here, the evidence shows that C.G. and E.G. have been domiciled in Mt. Olive while attending school in Randolph Township; and the Board provided a document stating that the per student tuition rate for the entire 2016-2017 school year was \$13,921. The ALJ concluded that the petitioner’s children have not been domiciled in the Randolph school district since January 7, 2017, and accordingly the Board is entitled to reimbursement from petitioner for the cost of tuition for his two children for the period from January 7, 2017 through the end of the 2016-2017 school year. The ALJ ordered the Board’s residency determination be modified to reflect this time period; further, respondent is entitled to tuition reimbursement for that period, the exact amount to be determined by the Board for the period of ineligibility.

Upon review, the Commissioner concurred with the determination of the ALJ that petitioner’s children were not eligible to attend school in respondent’s district between January 7, 2017 and June 20 17; however, the Commissioner also found that the Initial Decision does not adequately address the tuition costs due to the Board, as the record lacks the information necessary to properly calculate the amount of tuition owed to the school district – specifically the exact number of days of ineligible attendance by the minor children. Accordingly, the matter was remanded to the OAL for calculation of tuition due to the Board.

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 17578-17  
AGENCY DKT. NO. 265-11/17

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V.	:	COMMISSIONER OF EDUCATION
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_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Randolph Board of Education (Board).<sup>1</sup> In this case, the petitioner is challenging the Board’s determination that C.G. and E.G. were not entitled to attend school in the District during the 2016-2107 school year, and the Board’s assessment of tuition costs. The Administrative Law Judge (ALJ) found that C.G. and E.G. were not eligible to attend school in the Randolph School District (District) between January 7, 2017 and June 2017. The ALJ also ordered the petitioner to reimburse the Board for tuition costs in an amount to be determined by the Board for the period of ineligibility.

Upon a review of the record, the Commissioner finds that the ALJ’s determination that C.G. and E.G. were not eligible to attend school in the District between January 7, 2017 and June 2017 was not arbitrary, capricious or unreasonable.<sup>2</sup> The

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<sup>1</sup> The record did not include a transcript from the hearing that was held at the OAL on February 26, 2018.

<sup>2</sup> The Commissioner is not persuaded by the argument advanced in the Board’s exceptions that it is entitled to tuition costs for C.G. and E.G. for the entire 2016-2017 school year.

Commissioner, however, also finds that the Initial Decision does not adequately and completely address the tuition costs that the petitioner is required to reimburse the Board for C.G. and E.G.'s ineligible attendance in the District. The ALJ ordered the petitioner to reimburse the Board for tuition costs in an amount to be determined by the Board for the period of ineligibility; yet, there is no indication in the Initial Decision or in the record as to how many days C.G. and E.G. attended school in the District between January 7, 2017 and June 2017. Moreover, the Initial Decision did not provide the total sum of tuition costs owed to the Board for C.G. and E.G.'s ineligible attendance in the District.<sup>3</sup>

Accordingly, this matter is remanded to the OAL for a determination as to the exact amount of tuition costs that the petitioner owes the Board for C.G. and E.G.'s ineligible attendance in the District between January 7, 2017 and June 2017.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 13, 2018

Date of Mailing: April 13, 2018

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<sup>3</sup> The record does not include enough information that would enable the Commissioner to calculate the tuition costs that are owed to the Board at this juncture.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 17578-17

AGENCY DKT. NO. 265-11/17

**J.G. ON BEHALF OF MINOR CHILDREN**

**C.G. & E.G.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP  
OF RANDOLPH, MORRIS COUNTY,**

Respondent.

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**J.G.**, petitioner, pro se

**Marc H. Zitomer**, Esq. for respondent, board of Education of the Township of  
Randolph (Schenck, Price, Smith & King, LLP)

Record Closed: February 28, 2018

Decided: March 5, 2018

BEFORE **JOANN LASALA CANDIDO**, ALAJ:

**STATEMENT OF THE CASE**

Petitioner J.G., the father of the minor children C.G. and E.G., appeals the determination of the Randolph Township Board of Education (the "Board"/respondent) that J.G. does not reside within the Randolph Township school district and that tuition reimbursement is required. The Board alleges that the minor children were not residing at the address provided by the petitioner but rather were residing in their home in Mt. Olive and seeks repayment of tuition.

### **PROCEDURAL HISTORY**

On July 10, 2017, the Board notified J.G. that the children were ineligible to continue to attend school within the district and they were not domiciled in Randolph for the 2016-2017 school year. On or about November 15, 2017, the petitioner filed a timely notice of appeal after receiving a Notice of Residency Hearing Determination on August 16, 2017. The Board filed an answer on November 27, 2017. On November 30, 2017, 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 hearing was held on February 26, 2018, and following the receipt of the copies of rental receipts, the record closed on February 28, 2018.

### **FINDINGS OF FACT**

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

1. At the start of the 2016-2017 school year, C.G. and E.G. were enrolled in Randolph school district as non-residents.
2. J.G. was advised that he had to secure residence in Randolph within one month of the start of the school year to avoid being assessed tuition pursuant to District Policy 5111. J.G. was granted an additional month

extension to secure a Randolph residence. P-1 He had been residing in Westwood.

3. J.G. rented a one-bedroom apartment in Randolph, as a seven-month tenant effective November 19, 2016 and ending June 18, 2017, \$1340.00 rent per month. Rental payment receipts have been provided by J.G. through January 2017.
4. J.G. closed on a home in Mt. Olive, New Jersey on December 9, 2016. Utility service was effective December 15, 2016 at the Mt. Olive residence.
5. Furniture was delivered to the Mt. Olive home on January 4 and 6, 2017. P-8 and 9. A home repair was done on January 7, 2017. P-11
6. A Default Judgement was entered in Special Civil Part, Superior Court of New Jersey, Morris County on March 24, 2017, for non-payment of rent at the Randolph apartment in the amount of \$1600.00. R-1
7. J.G.'s Mt. Olive residence is effective January 7, 2017.
8. Non-resident student tuition rate for the 2016-2017 school year is \$13,921.00 per child in Randolph school district.

Petitioner bears the burden to prove that his children were domiciled in the Township of Randolph for the 2016-2017 school year. Failure to sustain that burden leaves in place and effect the findings of Board at its hearing regarding domicile.

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).

From the evidence submitted, C.G. and E.G. have been domiciled in Mt. Olive while attending school in Randolph Township from January 2017 through the end of the 2016-2017 school year. J.G. has provided no proof by a preponderance of the credible evidence to sustain his burden that the Randolph apartment was considered his and the children’s true and fixed permanent residence even after he closed on his Mt. Olive home.

The Board asserts that it is entitled to be reimbursed for tuition for the period of C.G. and E.G.’s ineligible enrollment in its school. Where, as here, the evidence does not support the claims of the resident, 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) likewise 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.

Respondent provided a Resolution for the Residency Hearing of C.G. and E.G. that stated the per student tuition rate for the 2016-2017 school year is \$13,921.00 per child. R-7.

Based upon the facts adduced and the legal principles cited above, I **CONCLUDE** that C.G. and E.G. have not been domiciliary in the Randolph School District since January 7, 2017 and that respondent is entitled to reimbursement from petitioner for the costs of audited tuition, an amount to be calculated by the Randolph School District after that date.

### **DECISION AND ORDER**

Based on the foregoing, it is hereby **ORDERED** that respondent's determination that petitioner, J.G. and his children are not residents and domiciliary in Randolph, New Jersey, and were not domiciled within its school district during the period of January 7, 2017 through June 2017 is hereby **MODIFIED** to reflect this time period. It is further **ORDERED** that respondent is entitled to reimbursement from petitioner for the cost of audited tuition for his two children in an amount determined by the Randolph School District.

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.



March 5, 2018

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DATE

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**JOANN LASALA CANDIDO, ALAJ**

Date Received at Agency:

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March 5, 2018

Date Mailed to Parties:

ljb

**APPENDIX**

**LIST OF EXHIBITS**

**Joint:**

J-1 Apartment Lease Contract

**For Petitioner:**

- P-1 District Policy – 5111 – Eligibility of Resident/Nonresident Students
- P-2 E-mail from petitioner to Fano dated September 19, 2016
- P-3 E-mail to petitioner from Fano dated October 14, 2016
- P-4 J.G. residency timeline
- P-5 E-mail to Fano from Gerry Eckert dated February 2, 2017
- P-6 Wells Fargo account
- P-7 Optimum statement
- P-8 Packing invoice dated 7-28-16 and Atlas moving invoice delivery signed 1-4-17
- P-9 Home and Kids furniture delivery dated 1-6-17
- P-10 Home Inspection Report dated October 28, 2016
- P-11 Smart Home Solutions dated 1-7-2017
- P-12 NJ Natural Gas invoice for Dec. 16 to January 25, 2017 in the amount of \$333.03
- P-13 JCP&L service start date 12-15-2016
- P-14 Notice to Vacate Westwood apartment.
- P-15 Cashier Checks to Center Grove
- P-16 Renters Insurance Application effective date 11-16-2016
- P-17 E-mail to Fano from Paul Bachrach dated 2-1-2017
- P-18 E-mail payment confirmation from Randolph apartment to S.G.  
dated January 7, 2017

For Respondent:

- R-1 Default Judgement dated March 24, 2017
- R-2 Notes dated 8-15-17
- R-3 JCP&L dated 12-29-2016
- R-4 JCP&L dated 1-31-2017
- R-5 JCP&L dated 1-16-2017
- R-6 Affidavit
- R-7 Resolution for the Residency Hearing of C.G. & E.G.
- R-8 Deed dated 12-9-2016