

R.M., ON BEHALF OF MINOR CHILDREN, J.P. AND J.P.,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	
	:	DECISION
BOARD OF EDUCATION OF THE TOWNSHIP OF UNION, UNION COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner challenged the residency determination of the respondent Board that her minor children are not entitled to a free public education in the Union Township School District. Petitioner asserted that she and her children live with extended family in Union. The Board contended that the results of a residency investigation showed that the children are domiciled out-of-district. Accordingly, the Board sought tuition reimbursement for both children for the entire 2017-2018 school year. The matter was transmitted to the Office of Administrative Law as a contested case, and a hearing was held on June 20, 2018.

The ALJ found, *inter alia*, that: the issue herein is whether petitioner’s minor children are eligible to attend Union Township school free of charge, in accordance with *N.J.S.A.* 18A:38-1; petitioner and her two children – aged 8 and 12 – reside, for financial reasons, with R.M.’s sister, N.E., in a three bedroom home in Union; R.M. had previously resided with the father of her children until he left the country a year ago, after which R.M. could no longer afford the rent; petitioner works as a nurse’s aide; petitioner’s brother-in-law, E.W., helped care for R.M.’s children at his apartment in Irvington when she worked and was unable to take them to school; the arrangement with E.W. ended in March 2017, and thereafter the children stayed in Union every night; R.M. would not be able to provide for her children without the care of the extended family unit in her sister N.E.’s home in Union; despite the results of the Board’s residency investigation, R.M. and her sisters, N.E. and B.M, testified credibly that R.M. and her two children moved into N.E.’s home in Union after experiencing hard times when R.M.’s husband left the country. The ALJ concluded that it is clear from the documentary and testimonial evidence that R.M. and her children have been domiciled within the Union school district continuously since before the beginning of the 2017-2018 school year, and are therefore entitled to attend the Board’s public schools free of charge.

Upon review of the record in this matter, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision as the final decision in this matter.

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 04411-18  
AGENCY DKT. NO. 56-3/18

R.M., ON BEHALF OF MINOR CHILDREN, :  
J.P. AND J.P., :  
PETITIONER, :  
COMMISSIONER OF EDUCATION  
V. :  
DECISION  
BOARD OF EDUCATION OF THE TOWNSHIP :  
OF UNION, UNION COUNTY, :  
RESPONDENT. :

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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 Board. Petitioner did not file a reply.

In its exceptions, the Board urges the Commissioner to reject the Initial Decision, which found that petitioner and the minor children were domiciled in Union Township and were therefore entitled to attend school in Union Township free of charge. The Board argues that the Administrative Law Judge (ALJ) discounted the evidence submitted by the Board’s investigator, who – between October 2017 and June 2018 – conducted surveillance fifty-eight times on the Union Township address, where petitioner claims she lives with her sister, and the Irvington address where her brother-in-law lives. The Board notes that the investigator did not observe petitioner or her children leave the Union Township home in the morning or return from school in the afternoon, except for a few occasions when petitioner’s car would drive up in the afternoon, a child would run into the house and back out to the car, which would then drive away. The investigator did, however, observe petitioner’s car parked at the Irvington address on ten dates, from October 2017 to January 2018, but not after. The Board maintains that petitioner did not submit any evidence besides her testimony and that of her sisters, which the Board argues is self-serving. As such, the Board

contends that in light of the evidence, petitioner did not meet her burden of demonstrating that she lives in Union Township.

Upon review, the Commissioner notes that the ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and make findings of fact based upon their testimony, and the ALJ found the testimony of petitioner and her sisters to be credible. Despite evidence submitted by the Board, the ALJ found the testimony and explanation by the witnesses concerning their living situation and whereabouts on the dates in question to be credible. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.  
[*N.J.S.A.* 52:14B-10(c)].

The Commissioner finds no basis in the record to disturb the ALJ's credibility assessments. As such, the Commissioner concurs with the ALJ that petitioner is domiciled in Union Township and therefore the minor children are entitled to attend school in the District free of charge.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter.

IT IS SO ORDERED.<sup>1</sup>

COMMISSIONER OF EDUCATION

Date of Decision: August 9, 2018

Date of Mailing: August 9, 2018

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<sup>1</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 04411-18

AGENCY DKT. NO. 56-3/18

**R.M. ON BEHALF OF MINOR CHILDREN**

**J.P. AND J.P.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP**

**OF UNION,**

Respondent.

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**R.M.**, pro se petitioner

**Stephen J. Christiano**, Esq. for respondent Board of Education of the Township  
of Union (Sciarrilo, Cornell, Merlino, McKeever & Osborne, LLC)

Record Closed: June 20, 2018

Decided: June 25, 2018

BEFORE: **JOANN LASALA CANDIDO**, ALAJ

**STATEMENT OF THE CASE**

Petitioner R.M., the mother of the minor children J.P. and J.P., appeals the determination of the Union Township Board of Education (the "Board"/respondent) that R.M. does not reside within the Union Township school district with family members 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 elsewhere and seeks repayment of tuition.

### **PROCEDURAL HISTORY**

On February 21, 2018, the Board notified R.M. that the children were ineligible to continue to attend school within the district and they were not domiciled in Union for the 2017-2018 school year. The petitioner filed a timely notice of appeal after receiving a Notice of Residency Hearing Determination on or about March 13, 2018. The Board filed an answer on March 26, 2018. On March 28, 2018, 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 June 20, 2018, and the record closed on that date.

### **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 2017-2018 school year, as well as previous school years, J.P. and J.P. were enrolled in Union township school district. R.M. and her two children ages twelve and eight reside with her sister, N.E. in Union in a three-bedroom home for the past year. R.M. previously resided with the father of her children until a year ago when he left the country and she could no longer afford the rent. R.M. is a nurse aide. J.P. attended pre-school in Irvington at R.M.'s church.
2. E.W., brother-in-law to R.M. resides in Irvington and helped care for her two children as well as her sister's child A.W. at his apartment when she worked and was unable to take them to school. This arrangement ended

in March when her sister began to have issues with E.W. Thereafter the children have been staying in Union every night.

3. R.M. would not be able to provide for her children without the care and concern of the close family unit in her sister's home in Union.
4. Union Township school district Investigator Dan Hodge investigated the District's non-residency claim after eight-year-old J.P. asked his teacher how to spell Irvington when she inquired where he came from. He observed the Union address on many occasions from October 11, 2017 through June 2018. He had never seen R.M.'s car parked in front of the Union address but did observe her dropping off students and then leaving the house with the child/children after a few minutes and then proceed to Irvington. Hodge did not observe the children leaving the Union address in the morning.
5. Despite Hodge's conclusion, I find as a fact that J.P. and J.P. were domiciled with their mother during the 2017-2018 school year. I find her testimony to be credible and in corroboration with her sisters' testimony.
6. R.M. and her two children are Union Township residents.
7. Non-resident student tuition rate for the 2017-2018 school year commencing in October is \$13,689.00 for J.P. (the 6<sup>th</sup> grader) and \$13,356.00 for J.P. (the 2<sup>nd</sup> grader)

Petitioner bears the burden to prove that her children were domiciled in the Township of Union for the 2017-2018 school year and not with the brother-in-law in Irvington. 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). Mercadante v. City of Paterson, 111 N.J. Super 35, 39 (Ch. Div. 1970), aff'd, 58 N.J. 112 (1971). A person may have more than one residence but only one domicile, which is that place that the person regards as his or her true and permanent home. Board of Educ. of Middle, Cape May County v. K.K., 93 N.J.A.R. 2d (EDU) 461.

The Board asserts that it is entitled to be reimbursed for tuition for the period of J.P. and J.P.'s ineligible enrollment in its school because the children are residing in Irvington.

I found the testimony of R.M and her sisters N.E. and B.M., to be credible, that R.M. and her children moved into her sister's home in Union after experiencing hard times when her husband left the country. N.E. confirmed that her sisters and the children live with her and she helps both sisters as much as she can. It is clear from the documentary and testimonial evidence that R.M. and her children have been domiciled within the district continuously since before the beginning of the 2017-2018 school year. I therefore **CONCLUDE** that since J.P. and J.P. are domiciled within the Union Township school district, since before the September 2017 start of the school year, they are entitled to attend the Union Township public schools free of charge.

## **DECISION AND ORDER**

Based on the foregoing, it is **ORDERED** that the determination denying domicile (residence) eligibility to the minor children be and hereby is **REVERSED**. The children are entitled to a free public education in Union Township.

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.



June 25, 2018

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DATE

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**JOANN LASALA CANDIDO, ALAJ**

Date Received at Agency:

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June 25, 2018

Date Mailed to Parties:

ljb

## **APPENDIX**

### **LIST OF EXHIBITS**

#### **For Petitioner:**

None

#### **For Respondent:**

- R-1 Investigation Report of Dan Hodge
- R-2 Updated Investigation Report
- R-3 Tuition calculation for the 2017-2018 school year for A.W. and D.W.
- R-4 Tuition calculation for the 2017-2018 school year for J.P. and J.P
- R-5 Vehicle Registration October 2017
- R-6 Form Request for an investigation