

33-19

J.H., on behalf of minor children, :  
J.S. and Z.H., :  
 :  
Petitioner, : Commissioner of Education  
V. :  
 : Decision  
Board of Education of the Township :  
of Neptune, Monmouth County, :  
 :  
Respondent. :

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### Synopsis

Petitioner filed a *pro se* residency appeal on behalf of her children, seeking a determination that J.S. and Z.H. were entitled to a free public education in Neptune schools. The respondent Board contended that a residency investigation indicated that petitioner and her children are not domiciled at the Neptune address provided to the school district, but rather are domiciled out of district, at an address in Brick Township, New Jersey. The Board filed a counterclaim for tuition for the period of the children's ineligible attendance.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(b)(2), a petitioner has the burden of proof in a determination of residency ineligibility; in this matter, a hearing was scheduled for September 12, 2018; J.H. subsequently notified the Office of Administrative Law (OAL) that she had moved her children out of the Neptune school district and had withdrawn the petition; petitioner failed to appear at the previously scheduled hearing, wherein Neptune presented proofs relative to its tuition claim; petitioner later contacted the OAL to object to the tuition reimbursement demanded by the Board; the record was reopened to give the petitioner an opportunity to appear and submit opposition to the tuition cost, but petitioner once again failed to appear at a second hearing held on December 5, 2018 and offered no explanation for her nonappearance. The ALJ concluded that the Board's residency determination should be upheld, and the petition of appeal dismissed pursuant to *N.J.A.C.* 1:1-14.4. Further, the ALJ concluded that the Board is entitled to tuition reimbursement in the amount of \$13,350.25 for the period of J.S. and Z.H.'s ineligible attendance from January 12, 2018 through June 21, 2018. The ALJ recommended dismissal of the petition with prejudice.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter, with minor modification to the amount of tuition due. Petitioner was ordered to reimburse the Board in the amount of \$13,350.53. The petition was dismissed with prejudice.

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.
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January 30, 2019

OAL Dkt. No. EDU 06400-18  
Agency Dkt. No. 86-4/18

J.H., on behalf of minor children, J.S. and Z.H.,	:	
	:	
Petitioner,	:	Commissioner of Education
V.	:	
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Board of Education of the Township of Neptune, Monmouth 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.<sup>1</sup> The parties did not file exceptions.

Upon such review, the Commissioner concurs with the Administrative Law Judge’s (ALJ) finding that because petitioner failed to appear at the December 5, 2018 OAL hearing without providing an explanation – after the court rescheduled the hearing following petitioner’s previous failure to appear on September 12, 2018 – the petition of appeal is dismissed with prejudice.<sup>2</sup>

In accordance with *N.J.A.C.* 1:1-14.4(d), the ALJ held an ex parte hearing, during which the Board presented proofs relative to its tuition claim. The Commissioner concurs with the ALJ’s assessment of tuition – pursuant to *N.J.S.A.* 18A:38-1b – against petitioner for the period of ineligible attendance by her minor children in Neptune. Therefore, the Board is

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<sup>1</sup> The Commissioner was not provided with transcripts of the September 12, 2018 or December 5, 2018 hearings at the OAL.

<sup>2</sup> The Commissioner notes that petitioner had previously advised the OAL that although she wanted to withdraw her appeal due to the relocation of her children to another District, she intended to object to the assessment of tuition.

entitled to tuition reimbursement in the amount of \$13,350.53<sup>3</sup> (\$70.56 per day for 88 days plus \$353.09 for summer school for J.S., and \$70.71 per day for 96 school days for Z.H.) for the time period from January 12, 2018 through June 21, 2018, during which time the minor children were ineligible to attend school in Neptune.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, as modified herein, and the petition of appeal is hereby dismissed. Petitioner is directed to reimburse the Board in the amount of \$13,350.53 for tuition costs incurred during the time period that the minor children were ineligible to attend school in Neptune.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: January 30, 2019

Date of Mailing: January 30, 2019

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<sup>3</sup> The ALJ found that the petitioner owed the Board \$13,350.25 – a difference of \$.28 from the Commissioner’s calculation – due to the difference in rounding of the daily tuition cost.

<sup>4</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 6400-18  
AGENCY DKT. NO. 86-4/18

**J.H. ON BEHALF OF MINOR  
CHILDREN, J.S. AND Z.H.,**

Petitioners,

v.

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

Respondent.

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**No appearance by petitioner**

**Margaret A. Miller**, Esq., for respondent (Weiner Law Group LLP, attorneys)

Record Closed: December 5, 2018

Decided: December 19, 2018

BEFORE **MARY ANN BOGAN**, ALJ:

**STATEMENT OF THE CASE**

Petitioner appeals the determination of the respondent, Township of Neptune Board of Education (“the Board”), that J.S. and Z.H. are not domiciled in its district. The Board seeks an order affirming the disenrollment of J.S. and Z.H., and directing all back-tuition charges for the days of attendance from the first day of illegal attendance to

the date of actual removal of J.S. and Z.H. The Board further requests all cost of litigation including reasonable attorney's fee.

### **PROCEDURAL HISTORY**

Petitioner filed an appeal with the Department of Education ("the Department") on April 9, 2018. The Board filed an answer on May 1, 2018. The matter was transmitted and filed at the Office of Administrative Law (OAL) where on May 3, 2018, it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Subsequently, the petitioner failed to participate in a prescheduled telephone prehearing. Thereafter, petitioner notified the OAL that she removed her children out of district and withdrew her appeal. All parties were served notice of proof hearing date. On September 12, 2018, Board appeared for the proof hearing, and petitioner failed to appear and did not contact the OAL that day to provide a reason for her nonappearance. On September 14, 2018, petitioner contacted the OAL objecting to the tuition cost. The record was reopened to give petitioner an opportunity to submit opposition to the tuition cost and to appear. All parties were served with a new date to appear, but petitioner failed to appear and prosecute her appeal of the Board's demand for tuition and she failed to advise the OAL of the reason for her nonappearance. The record closed on December 5, 2018.

### **FACTUAL DISCUSSION**

At the hearing, the Board offered a packet of documentary evidence (R-1 – R-11), and the testimony of Peter Barlett, Assistant Business Administrator and Board Secretary, in support of its claim to tuition reimbursement. Based on the documentary and testimonial evidence presented to me, I **FIND** the following **FACTS**:

1. J.S. was a sixth-grade general education school student and Z.H. was a preschool student in the Neptune schools.
2. The Board determined that J.S. and Z.H. were not domiciled in Neptune commencing January 12, 2018. (R-1.)

3. During the time period from January 12, 2018 through June 21, 2018, the District charged petitioner for the days of attendance, when petitioner's children were not domiciled in Neptune. During this time period, J.S., a sixth grade student attended school for eighty-eight days, and Z.H., a pre-school student attended school for ninety-six days. J.S. also attended summer school.
4. The annual per pupil cost for a general education school student in the same grade as J.S. is \$12,700 and for Z.H. is \$12,728. (R-10.)
5. The daily tuition rate for a general education school student in the same grade as J.S. is \$70.56 and for Z.H. is \$70.71. This is calculated by dividing the per pupil cost by 180. (R-10.)
6. J.S. also attended summer school. The tuition for summer school totaled \$3,530.92 for ten students. The summer school per pupil cost is \$353.09.
7. As of June 3, 2018, the amount of tuition owed to the Board for J.S.'s period of ineligible attendance is \$6,208.89 for general education, and \$353.09 for summer school. The amount of tuition owed for Z.H.'s period of ineligible attendance is \$6,788.27. The Board determined that a total of \$13,350.25 is owed by petitioner for tuition. (R-10.)

### **LEGAL DISCUSSION AND CONCLUSIONS OF LAW**

Public schools are required to provide a free education to individuals between the ages of five and twenty years who are domiciled within the school district. N.J.S.A. 18A:38-1(a). 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 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).

Where 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 to 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 notified the OAL that she withdrew the petition and moved her children out of district. Thereafter, the parties were notified of a proof hearing. The proof hearing was held on September 12, 2018 and petitioner failed to appear. After the proof hearing, the petitioner contacted the OAL objecting to tuition reimbursement. The record was re-opened. Petitioner was served with a new date to appear but has failed to appear and prosecute her appeal of the Board's demand for tuition and she has failed to advise me of the reason for the nonappearance. Therefore, I **CONCLUDE** that the determination of the Board that J.S. and Z.H. were not domiciled in Neptune Township during the period of time from January 12, 2018 to June 21, 2018, should be upheld and the petition of appeal dismissed pursuant to N.J.A.C. 1:1-14.4.

The Board asserts that it is entitled to be reimbursed for tuition for the period of J.S.'s and Z.H.'s ineligible enrollment in its schools. 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 an appeal to the Commissioner is filed by the parent, guardian, adult student, or school district resident keeping an "affidavit" student and the petitioner does not sustain the burden of demonstrating the student's right to attend the school district, or the petitioner withdraws the appeal, fails to prosecute, or abandons the appeal by any means other than settlement agreeing to waive or reduce tuition, the Commissioner may assess tuition for the period

during which the hearing and decision on appeal were pending, and for up to one year of a student's ineligible attendance in a school district prior to the appeal's filing and including the 21-day period to file an appeal.

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.

In accordance with N.J.A.C. 1:1-14.4(d), I accepted ex parte proofs from the Board relative to its tuition claim. The Board's proofs are convincing, and its calculations are consistent with the requirements of N.J.S.A. 18A:38-1(b) and N.J.A.C. 6A:22-6.2(a). Therefore, I **CONCLUDE** that the Board has demonstrated an entitlement to tuition reimbursement in the amount of \$13,350.25, for eighty-eight days of school attendance for J.S. and ninety-six days of school attendance for Z.H. for the period from January 12, 2018 through June 21, 2018.

### **ORDER**

Based on the foregoing, I **ORDER** that the petition of appeal be **DISMISSED WITH PREJUDICE**. I further **ORDER** that the Board's application for tuition reimbursement is **GRANTED** in the amount of \$13,350.25.

The Board's request for all cost of litigation including reasonable attorney's fee is **DENIED**.

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.

December 19, 2018

DATE



**MARY ANN BOGAN, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

MAB/cb

## **APPENDIX**

### **WITNESSES**

#### **For petitioner:**

None

#### **For respondent:**

Peter I. Barlett, Assistant Business Administrator and Board Secretary

### **EXHIBITS**

#### **For petitioner:**

None

#### **For respondent:**

- R-1 Notice of Final Ineligibility re: J.S., dated January 12, 2018
- R-2 Residency Verification Investigation – 2017-2018 School Year
- R-3 Notice of Final Ineligibility re: Z.H. and J.S., dated February 28, 2018
- R-4 Notice of Final Ineligibility re: J.S. and Z.H., dated March 29, 2018
- R-5 Notices of Hearing scheduled for June 20, 2018
- R-6 2017-2018 District Calendar
- R-7 Board Resolution with certified tuition rates, dated January 25, 2017
- R-8 ESY and backup
- R-9 Email from Susan J. Green to Peter I. Bartlett and Debra A. Lindblom re:  
Attendance Audit re: Z.J.H. and J.S., dated September 7, 2018
- R-10 Tuition Calculation
- R-11 Pre-School Tuition Calculation