

S.F., ON BEHALF OF MINOR CHILD, R.F., :  
 PETITIONER, :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 : DECISION  
 BOARD OF EDUCATION OF THE CITY OF :  
 ORANGE, ESSEX COUNTY, :  
 :  
 RESPONDENT. :  
 \_\_\_\_\_ :

SYNOPSIS

Petitioner filed a *pro se* residency appeal on behalf of her child, R.F., seeking a determination that R.F. is entitled to a free public education in Orange schools. The respondent Board contended that a residency verification investigation in the Fall of 2017 indicated that petitioner and her child are not domiciled in Orange. S.F. failed to appear at the OAL hearing in this matter. The Board filed a counterclaim for tuition for the period of R.F.’s ineligible attendance.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1, a petitioner has the burden of proof in a determination of residency ineligibility; in this matter, a hearing was scheduled for September 5, 2018 and petitioner received appropriate notice thereof, but failed to appear at the hearing; the Board’s attendance officer appeared at the hearing and testified that a residency verification had determined that S.F. and R.F. were not domiciled in Orange during the 2017-2018 school year; R.F. continued to attend Orange schools for a total of 137 days, from November 6, 2017 through June 20, 2018, after the notice of ineligibility was received; and the per day tuition rate for this period was \$77.06. The ALJ concluded that S.F. was not domiciled in Orange during the 2017-2018 school year; accordingly, the Board’s counterclaim for tuition was granted, and petitioner was ordered to reimburse the Board in the total amount of \$10,577.22 for the period of R.F.’s ineligible attendance. The petition was dismissed.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and the Initial Decision was adopted as the final decision in this matter, with modification to the amount of tuition owed. Petitioner was ordered to reimburse the Board in the amount of \$10,557.22, and 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.

November 8, 2018



of the minor child's ineligible attendance in Orange's schools. It appears the ALJ mistakenly calculated the amount of tuition owed as \$10,577.22, when it should be \$10,557.22.

The Commissioner fully concurs with the ALJ's determination and recommendation that petitioner's failure to prosecute this matter necessitates its dismissal and the award of tuition to the Board. Accordingly, the recommended decision of the OAL – as modified herein – is adopted as the final decision in this matter and petitioner is hereby directed to pay the Board \$10,557.22 in tuition for her child's ineligible attendance in Orange from November 6, 2017 through June 20, 2018.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: November 2, 2018

Date of Mailing: November 2, 2018

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<sup>2</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**

**FAILURE TO APPEAR**

OAL DKT. NO.: EDU 18797-17

AGENCY DKT. NO.: 260-11/17

**S.F. ON BEHALF OF MINOR CHILD, R.F.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE  
CITY OF ORANGE, ESSEX COUNTY,**

Respondent.

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**S.F.**, petitioner, pro se failed to appear

**Jessika Kleen**, Esq. for respondent (Machado Law Group, attorneys) for  
respondent

Record Closed: September 5, 2018

Decided: September 26, 2018

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

**STATEMENT OF THE CASE**

Respondent, (Board of Education of the City of Orange), seeks reimbursement of tuition from petitioner, parent of minor child R.F. for a period of 137 days, commencing November 6, 2017 and ending June 20, 2018, asserting that petitioner and her children were not domiciled within the School District.

**PROCEDURAL HISTORY**

The matter was transmitted to the Office of Administrative Law (OAL) on December 28, 2017, for hearing as a contested case. On due notice to all parties, the hearing was scheduled for August 3, 2018, which was adjourned at the request of the parties. The matter was scheduled and heard on September 5, 2018, at which time petitioner failed to appear. Respondent entered evidence and testimony into the record and the record was closed on September 5, 2018.

**ISSUE**

The issue in this matter is whether minor child R.F. is eligible to attend respondent's Orange public schools free of charge in accordance with N.J.S.A. 18A:38-1 and, if not, whether respondent's request for tuition reimbursement should be granted.

**FINDINGS OF FACT**

1. On August 3, 2018, the OAL mailed a Peremptory Notice to Appear at the OAL on September 5, 2018, to petitioner at the address she provided.
2. The United States Postal Service never returned the above communication as undeliverable.
3. The OAL received no communication from petitioner regarding her failure to appear on September 5, 2018.

4. A residency check conducted by respondent found that R.F. did not reside in Orange, New Jersey.
5. On October 26, 2017, the District provided to S.F. a notice of Initial Ineligibility for her child, R.F. who attends school in Orange.
6. The daily tuition rate for the minor child is \$77.06.

### **LEGAL ANALYSIS**

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 parents or guardian has a permanent home in the district such that “the parent or guarding 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).

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.

Respondent produced district attendance officer Walter Howell, who testified on respondent's its behalf. He stated that as a result of a residency verification investigation, it was determined that R.F. was not domiciled in Orange, and a Notice that the child was ineligible to continue to attend its public schools was sent to the petitioner. The child continued to attend school in the district for a total of 137 days this school year, the cost of tuition totaling \$10,557.22.

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.

Based upon the facts adduced and the legal principles cited above, I **CONCLUDE** that petitioner's children were not a domiciliary in the City of Orange Board of Education School District for the days sought and that respondent is entitled to reimbursement for the costs of audited tuition in the amount of \$10,577.22.

### **DECISION AND ORDER**

Based on the foregoing, it is hereby **ORDERED** that respondent's determination that petitioner and her child are not residents and domiciliary in Orange, New Jersey, and were not domiciled within its school district during the period from November 6,

2017 through June 20, 2018, is hereby **AFFIRMED**. It is further **ORDERED** that respondent is entitled to reimbursement from petitioner at a daily tuition rate \$77.06 for the total cost of audited tuition in the amount of \$10,577.22.

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 of which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATT: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4<sup>th</sup> 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.

September 26, 2018

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DATE

  
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**JUDE-ANTHONY TISCORNIA, ALJ**

Date Received at Agency:

9/26/18

Date Mailed to Parties:

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