

New Jersey Commissioner of Education
Final Decision

M.D., on behalf of minor children, O.D.-G
and Y.D.-G.,

Petitioner,

v.

Board of Education of the Township of Deptford,
Gloucester County,

Respondent.

Synopsis

Pro Se petitioner appealed the determination of the respondent Board that O.D.-G. and Y.D.-G. were not domiciled in Deptford and therefore were not legally entitled to a free public education in the Deptford Township School District (District) as of November 2019 and thereafter. Petitioner – the uncle of the two students – submitted a lease for a Deptford rental property that included the students’ names as proof of residency, contending that the children lived with him in Deptford and were therefore entitled to a free public education in Deptford Township schools. The Board filed a motion for summary decision, asserting that the petitioner had failed to meet his burden of evidence to prove that the children were domiciled with him in Deptford, and further failed to provide proof that he was caring and providing for them as if he were their parent. The children never attended school in Deptford, and M.D. did not respond to the motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; pursuant to *N.J.A.C. 6A:22-3.2(a)*, a student is eligible to attend a school district if he or she is kept in the home of a person other than the student’s parent or guardian, if that person is domiciled in the school district and is supporting the student without remuneration, as if the student were his or her own child; in this case, however, petitioner failed to submit the required documentation supporting his claim; further, petitioner failed to respond to the respondent’s motion for summary decision. Accordingly, the ALJ concluded that O.D.-G. and Y.D.-G. were not entitled to a free public education in the respondent’s district. Summary decision was granted in favor of the respondent Board.

Upon review, the Commissioner concurred with the findings of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. 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 27, 2020

New Jersey Commissioner of Education

Decision

M.D., on behalf of minor children,
O.D.-G. and Y.D.-G.,

Petitioner,

v.

Board of Education of the Township of
Deptford, Gloucester County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner, the minor children's uncle, failed to sustain his burden of establishing that the minor children were domiciled with him in Deptford or that he was caring and providing for them as if he were their parent. The Commissioner further concurs with the ALJ's conclusion that the minor children were, therefore, not entitled to a free public education in Deptford Township at the time petitioner sought to enroll them in the district's schools in November 2019 or thereafter.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The Board's motion for summary decision is granted and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 27, 2020
Date of Mailing: December 1, 2020

¹ 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 GRANTING
RESPONDENT'S MOTION FOR
SUMMARY DECISION

OAL DKT. NO. EDU 00483-20

AGENCY DKT. NO. 315-12/19

M.D. O/B/O O.D-G. AND Y.D-G.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF DEPTFORD,
GLOUCESTER COUNTY,**

Respondent.

M.D., petitioner, no appearance

Albert K. Marmero, Esq. on behalf of respondent (Grace, Marmero & Associates, LLP, attorneys)

Record Closed: October 6, 2020

Decided: October 13, 2020

BEFORE **DOROTHY INCARVITO-GARRABRANT, ALJ:**

STATEMENT OF THE CASE

Petitioner, M.D. (petitioner), on behalf of O.D-G. and Y.D-G., challenges the determination made by the respondent, Board of Education of the Township of Deptford (respondent), that the minor students did not reside in Deptford Township (Deptford), and seeks to compel their enrollment in respondent's school district. Respondent answered the appeal on December 30, 2019. The respondent seeks dismissal of petitioner's appeal, because the petitioner never perfected enrollment of the minor students in its school district and the children never attended school in respondent's district.

PROCEDURAL HISTORY

On December 9, 2019, petitioner filed an appeal for residency on behalf of O.D-G. and Y.D-G. to determine their eligibility to enroll in respondent's school district. Respondent answered the appeal on December 30, 2019. The Department of Education Bureau of Controversies and Disputes transmitted this case to the Office of Administrative Law (OAL) on January 13, 2020, for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14 F-1 et seq.

Prehearing conferences were scheduled for February 11, 2020, July 13, 2020, and August 18, 2020. Petitioner and C.W. failed to appear at each conference. All notices were served properly by the OAL. No mailings were returned or unsuccessfully delivered. The OAL did not receive any contact from petitioner or C.W. while this matter was pending.²

On September 16, 2020, respondent filed a Motion for Summary Decision in its favor relative to the residency issue. It was served on petitioner and C.W. No opposition to the motion was received.

FACTUAL DISCUSSION AND LEGAL ARGUMENTS

Findings of Fact

The material facts were uncontroverted and I **FIND** as **FACT** the following:

M.D., petitioner, is the uncle of O.D-G. and Y.D-G. C.W. is the biological mother of O.D-G. and Y.D-G. The identity and whereabouts of O.D-G. and Y.D-G.'s biological father is unknown.

On November 19, 2019, C.W. appeared at respondent's school district to enroll O.D-G. and Y.D-G. for the 2019-2020 school year. C.W. had removed O.D-G. and Y.D-G. from the Cherry Hill School District on October 31, 2019. It is unknown if O.D-G. and Y.D-G. attended any school between October 31, 2019 and November 19, 2019. At that time, O.D-G. and Y.D-G were eighteen years old and seventeen years old, respectively.

C.W. was required to complete registration documents to enroll O.D-G. and Y.D-G. in respondent's district. The documents C.W. provided were incomplete. (R-A.) In this regard, C. W. failed to provide the required forms of proof of residency. Petitioner and M.D. did not provide an Affidavit of Residency and Support of a Minor, Affidavit of Relinquishment of a Minor to Guardian, and Registration Sworn Statement of Landlord Student with Guardian and/or Temporary Resident. C.W. produced a lease for a two-bedroom

² C.W. is the students' biological mother. Petitioner is the students' uncle.

apartment in Deptford on which three people, petitioner and his nuclear family member, were listed. O.D-G. and Y.D-G were not listed on the lease. C.W. was not listed on the lease. O.D-G. and Y.D-G.'s father was not listed on the lease. (R-B.) Between November 20, 2019 and December 3, 2019, respondent reviewed and requested additional documentation in order to confirm that C.W. resided in Deptford or that O.D-G. and Y.D-G. resided in Deptford with petitioner. Respondent also attempted to confirm that petitioner had custodial or guardianship rights to O.D-G. and Y.D-G. (R-C.)

On November 27, 2019, petitioner provided a new lease agreement, for the same residence. (R-D.) The new lease agreement had the same termination date and other suspicious anomalies. Petitioner, O.D-G., and Y.D-G. were listed on the lease. However, petitioner's nuclear family members had been removed from the lease and the amount of rent decreased. C.W. was not listed on the lease as a tenant. (R-D.) Upon inquiry by the respondent, petitioner advised that C.W. only told him to add O.D-G. and Y.D-G. to the lease. Despite repeated requests, C.W. did not provide any court order or custody documentation, which reflected that petitioner had custody of O.D-G. and Y.D-G. and that they would be residing with petitioner in Deptford.

Throughout this time, O.D-G. and Y.D-G. did not attend school in respondent's district.³ Petitioner and C.W. did not produce any other documents substantiating their claims that C.W. was domiciled in respondent's district, or that O.D-G. and Y.D-G. resided with petitioner and were domiciled in respondent's district.

On December 9, 2019, petitioner filed an appeal for residency on behalf of O.D-G. and Y.D-G. to determine their eligibility to enroll in respondent's school district. (R-E.) On December 30, 2019, respondent answered the appeal. Additionally, respondent advised petitioner and C.W. that pending the outcome of the instant residency appeal, O.D-G. and Y.D-G. could attend school in respondent's district. (R-G.) Despite this notice, O.D-G. and Y.D-G. never attended school in respondent's district during the 2019-2020 and 2020-2021 school years.

Legal Argument

For respondent

First, respondent argued that summary decision in its favor dismissing petitioner's appeal is appropriate because no genuine issue of material fact exists. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995).

³ It is unknown whether O.D-G. and Y.D-G. have attended any school since October 31, 2019.

Second, respondent argued that a student is eligible to attend a school district if he or she is kept in the home of a person other than the student's parent or guardian, and the person is domiciled in the school district and is supporting the student without remuneration, as if the student were his or her own child. N.J.A.C. 6A:22-3.2(a). The parent must file, with supporting documentation, a sworn statement that he or she is incapable of supporting or providing care for the student, due to family or economic hardship. The parent must provide a sworn statement that the student is not residing with the other person solely for the purpose of receiving a free public education. Additionally, the person with whom the student will reside must file a sworn statement that he or she is domiciled within the school district, is supporting the child without remuneration and intends to do so for a time longer than the school term, and that he or she will assume all personal obligations for the student pertaining to school requirements. N.J.A.C. 6A:22-3.2(a)(ii). Petitioner and C.W. never filed the applicable affidavits.

Third, respondent maintained that petitioner and C.W. never provided the required documentation to establish residency of O.D-G. and Y.D-G within respondent's district. N.J.A.C. 6A:22-3.1.

For petitioner

There was no appearance or participation by petitioner, or anyone on his behalf.

LEGAL DISCUSSION AND CONCLUSIONS

The respondent seeks relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c) which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that "if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary judgment." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill, at 540, (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 213 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 251-252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214.

Following the Brill standard, after considering all the papers and evidence filed in support respondent’s motion for summary decision and no opposition having been received, I **CONCLUDE** that there are no genuine issues of material fact that require a plenary hearing and that this matter is ripe for summary decision.

At issue is whether O.D-G. and Y.D-G. were entitled to a free education in respondent’s district under N.J.S.A. 18A:38-1, which provides that public schools shall be free to persons over five and under twenty years of age who are “domiciled within the school district.” See V.R. ex rel A.R. v. Hamburg Bd. of Educ., 2 N.J.A.R. 283, 287 (1980), aff’d, State Bd., 1981 S.L.D. 1533, rev’d on other grounds sub nom. Rabinowitz v. N.J. State Bd. of Educ., 550 F. Supp. 481 (D.N.J. 1982) (New Jersey requires local domicile, as opposed to mere residence, in order for a student to receive a free education). O.D-G. and Y.D-G were eighteen years old and seventeen years old, respectively at the time C.W. attempted to register them for school. Therefore, I **CONCLUDE** they meet the age requirements and are entitled to a free public education.

A person who meets age requirements and is domiciled within a school **district** may attend its public schools free of charge. N.J.S.A. 18A:38-1(a). A person may have many **residences** but only one domicile. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000), aff’d, 167 N.J. 55 (2001). A child’s domicile is normally that of his or her parents. Ibid. The domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning, and from which he has no present intention of moving. In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), aff’d, 311 N.J. Super. 589 (App. Div.), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051, 119 S. Ct. 1357, 143 L. Ed. 2d 518 (1999).

The acts, statements and conduct of the individual, as viewed in the light of all the circumstances, determine a person’s true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959). The parent has the burden of proof by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)(2).

Here, no competent evidence was produced demonstrating that C.W. resided in Deptford, or that O.D-G. and Y.D-G. resided with petitioner in Deptford. C.W. and petitioner never completed the registration documents and perfected enrollment of O.D-G. and Y.D-G. in respondent’s district.

Additionally, in this matter, no competent evidence was produced by petitioner that he had custody or guardianship of O.D-G. and Y.D-G. or that O.D-G. and Y.D-G. resided with him and he was responsible for their care and support, as if he were their parent.

In this regard, N.J.A.C. 6A:22-3.2, provides in pertinent part as follows:

(a) A student is eligible to attend the school district pursuant to N.J.S.A. 18A:38-1.b if he or she is kept in the home of a person other than the student's parent or guardian, and the person is domiciled in the school district and is supporting the student without remuneration as if the student were his or her own child.

1. A student is not eligible to attend a school district pursuant to this provision unless:

i. The student's parent or guardian has filed, together with documentation to support its validity, a sworn statement that he or she is not capable of supporting or providing care for the student due to family or economic hardship and the student is not residing with the other person solely for the purpose of receiving a free public education; and

ii. The person keeping the student has filed, if so required by the district board of education:

(1) A sworn statement that he or she is domiciled within the school district, is supporting the child without remuneration and intends to do so for a time longer than the school term, and will assume all personal obligations for the student pertaining to school requirements; and

(2) A copy of his or her lease if a tenant, a sworn landlord's statement if residing as a tenant without written lease, or a mortgage or tax bill if an owner.

The record reflects that O.D-G. and Y.D-G. were removed from the Cherry Hill School District by C.W. on October 31, 2019. O.D-G. and Y.D-G. never attended respondent's schools during the 2019-2020 school year, even though they were provided the opportunity during the pendency of this appeal. O.D-G. and Y.D-G. have not attended respondent's schools during the 2020-2021 school year.

Petitioner and C.W. failed to provide sufficient proof that O.D-G. and Y.D-G. were domiciled with petitioner in Deptford at any time material to this matter. Petitioner and C.W. failed to establish that C.W. was incapable of supporting or providing care for O.D-G. and Y.D-G., due to family or economic hardship. C.W. failed to demonstrate that O.D-G. and Y.D-G. were not residing with petitioner solely for the purpose of receiving a free public education. Although it appeared petitioner was domiciled in Deptford with his immediate family, the record was completely devoid of any competent evidence demonstrating that petitioner was supporting O.D-G. and Y.D-G. without remuneration and that he intended to do so for a time longer than the school term. Similarly, the record was devoid of any competent evidence demonstrating

that petitioner would assume all personal obligations for O.D-G. and Y.D-G. pertaining to school requirements. N.J.A.C. 6A:22-3.2(a)(1)(ii)(1).

Rather than perfect enrollment of O.D-G. and Y.D-G. in respondent's district, petitioner and C.W. provided inconsistent and incomplete documentation, upon which respondent could not make a conclusive determination as to whether O.D-G. and Y.D-G. were eligible for a free public education in its district. Respondent diligently attempted to aid petitioner and C.W. with the enrollment process and took appropriate actions throughout this matter.

Accordingly, in light of all of the facts and circumstances, I **CONCLUDE** that O.D-G. and Y.D-G. were not entitled to a free public education in the respondent's district. I **CONCLUDE** petitioner failed to satisfy his burden of proof that O.D-G. and Y.D-G. were domiciled with petitioner at his address in Deptford and that he was caring and providing for them as if he were their parent. I **CONCLUDE** respondent did not act in an arbitrary and capricious manner in this matter. I **CONCLUDE** summary decision in favor of respondent is appropriate.

ORDER

It is hereby **ORDERED** that Respondent's motion for summary decision is **GRANTED**. Petitioner's appeal is **DISMISSED**.

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.

October 13, 2020
DATE



DOROTHY INCARVITO-GARRABRANT, ALJ

Date Received at Agency

Date Mailed to Parties:

/lam

EXHIBITS

For petitioner

None

For respondent

- R-A Registration Documents for O.D-G. and Y.D-G., dated November 19, 2019.
- R-B Petitioner's Lease, dated July 1, 2019
- R-C Notes prepared by L. Winters
- R-D Petitioner's modified Lease, dated July 1, 2019
- R-E Residency Appeal, dated December 6, 2019
- R-F Respondent's Answer to Residency Appeal, dated December 30, 2019