

New Jersey Commissioner of Education

Decision

C.B., on behalf of minor child, C.B.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

Synopsis

Pro se petitioner challenged the determination of the respondent Board that she and her minor child, C.B., were not domiciled in Elizabeth for the 2019-20 and 2020-21 school years. C.B. had been in an out of district placement for special services at the Developmental Learning Center in New Providence since 2018, and the Board requested tuition reimbursement based upon the cost of C.B.'s out of district placement. In a March 8, 2021 Commissioner's decision remanding the matter to the OAL, the Commissioner disagreed with the ALJ's calculation of tuition owed to the Board and found instead that the Board's ability to recover tuition is limited pursuant to *N.J.S.A. 18A:38-1(b)*, which does not specify that the assessed tuition be equal to the actual costs incurred by the district for educating the student at issue. Rather, *N.J.S.A. 18A:38-1(b)* uses the measure of annual per pupil cost, which is based on the district's overall costs and enrollment, and is not specific to any individual student. As the Commissioner was unable to discern the per pupil cost from the record, the matter was remanded to the OAL for the sole purpose of recalculation of tuition pursuant to *N.J.S.A. 18A:38-1(b)*.

On remand, the ALJ found, *inter alia*, that: C.B. was ineligible to attend school in the district for the entire 2019-20 school year and for 112 days of the 2020-21 school year; based on budget worksheets submitted by the Board which contained per diem rates for out of district students categorized by grade and in accordance with the child's classification; the per diem rate for a student with autism was \$122.85 for the 2019-20 school year and \$171.57 for the 2020-21 school year. Accordingly, the ALJ concluded that the respondent Board is entitled to tuition reimbursement in the total amount of \$41,328.84 (\$22,113 for the 2019-20 school year and \$19,215.84 for 112 days of the 2020-21 school year).

Upon review, the Commissioner disagreed with the ALJ's calculation of tuition and reiterated that, pursuant to *N.J.S.A. 18A:38-1(b)*, tuition is calculated based on the total annual per pupil cost to the local district; special education costs are not included in that figure, which is based on a district's overall costs and enrollment, and is not specific to an individual student; here, the district's annual per pupil cost was \$11,773 for a kindergarten student during the 2019-20 school year and \$14,993 for a first grade student in the 2020-21 school year. The Commissioner concluded that the Board is owed \$11,773 for the 2019-20 school year and \$9,328.48 for 112 days of the 2020-21 school year. Accordingly, the Initial Decision was modified as to the total amount of tuition owed for the period of C.B.'s ineligible attendance, and petitioner was directed to reimburse the Board in the amount of \$21,101.48. The petition was dismissed.

<p>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.</p>

OAL Dkt. No. EDU 02722-21
(EDU 17292-19 ON REMAND)
Agency Dkt. No. 301-11/19

New Jersey Commissioner of Education
Decision on Remand

C.B., on behalf of minor child, C.B.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, mindful of the Commissioner's March 8, 2021 decision remanding this residency matter for determination of the annual tuition cost and calculation of tuition. The parties did not file exceptions.

In her March 8, 2021 decision, the Commissioner found that petitioner was not domiciled in Elizabeth for the 2019-20 and 2020-21 school years,¹ and the minor child was, therefore, not entitled to a free public education in the district during that time. With respect to the assessment of tuition, the Commissioner found that the Board's ability to recover tuition from petitioner is limited to "1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance." *N.J.S.A.* 18A:38-1(b). The Commissioner further explained that the measure of annual per pupil cost is based on the

¹ Following the Commissioner's decision, the minor child was disenrolled from the district on March 19, 2021. Subsequent to the disenrollment, petitioner provided documentation that she is now domiciled in Elizabeth and her child is permitted to attend school in the district.

district's overall costs and enrollment, is not specific to any individual student, and does not include the assessment of special education and related costs.² As such, the Commissioner remanded this matter for determination of the annual tuition cost and a calculation of tuition that is consistent with *N.J.S.A. 18A:38-1(b)*.

On remand, the Administrative Law Judge (ALJ) found that the minor child was ineligible to attend school in the district for the entire 2019-20 school year and for 112 days of the 2020-21 school year (up until his disenrollment on March 19, 2021). The ALJ noted that the Board submitted budget worksheets, which contained the per diem rates for out-of-district students categorized by grade and in accordance with the child's classification; the per diem rate for a student with autism was \$122.85 for the 2019-20 school year and \$171.57 for the 2020-21 school year. Accordingly, the ALJ found that the Board was entitled to tuition reimbursement in the amount of \$41,328.84 (\$22,113 for the 2019-20 school year and \$19,215.84 for 112 days of the 2020-21 school year).

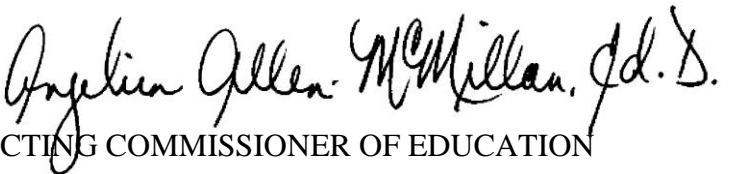
Upon review, the Commissioner disagrees with the ALJ's calculation of tuition. The Commissioner reiterates that tuition is calculated based on the "total annual per pupil cost to the local district." *N.J.S.A. 18A:38-1(b)*. Special education costs are not included in that figure, as it is based on a district's overall costs and enrollment, and is not specific to an individual student. *N.J.-B., on behalf of minor child, I.T. v. Board of Education of the Township of Union, Union County*, Commissioner's Decision No. 112-20, decided April 24, 2020. In this matter, the annual per pupil cost was \$11,773 for a kindergarten student during the 2019-20 school year and \$14,993 for a first-grade student in the 2020-21 school year. As such, the Board is entitled to

² The minor child attended an out of district placement at the Developmental Learning Center in New Providence for special services.

tuition in the amount \$21,101.48. Specifically, the Board is owed \$11,773 for the 2019-20 school year and \$9,328.48 for the 2020-21 school year (\$83.29 per day for 112 days).

Accordingly, the Initial Decision of the OAL is modified as stated herein. Petitioner is directed to reimburse the Board in the amount of \$21,101.48 for tuition costs incurred during the time period that C.B. was ineligible to attend school in Elizabeth. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.³


ANGELINA ALLEN McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2021
Date of Mailing: June 15, 2021

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. EDU 02722-21

AGENCY REF. NO. 301-11/19

ON REMAND

OAL DKT NO. EDU 17292-19

AGENCY REF NO. 301-11/19

C.B. o/b/o MINOR CHILD, C.B.,

Petitioners,

v.

BOARD OF EDUCATION OF THE CITY

OF ELIZABETH, UNION COUNTY,

Respondents.

C.B., on behalf of minor child C.B., petitioner pro se

Christina M. DiPaola, Esq., for respondent (LaCorte, Bundy, Varady & Kinsella,
attorneys)

Record Closed: APRIL 23, 2021

Decided: April 28, 2021

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, C.B., on behalf of minor child C.B. (petitioner) lost an appeal of a residency determination by the Board of Education of the City of Elizabeth (BOE/respondent) that petitioners did not reside in Elizabeth and consequent demand for tuition reimbursement for the time frame where the minor child was enrolled in the BOE's

public school beginning the school year of 2019-2020, until the child was disenrolled. (Initial Decision, December 8, 2020). The minor child received special education services for autism as a kindergarten and first grade student. Petitioner was assessed \$96,972.24 for costs as of the date of the hearing, November 9, 2020. The Initial Decision determination that petitioner was not domiciled in Elizabeth while enrolled in Elizabeth public schools was affirmed, however the matter was remanded because of the calculation of tuition, which was calculated at the actual cost paid by the City for the cost of education of the minor child, which equated to a per diem rate of \$391.22.

The matter was returned to determine the “annual per pupil cost, which is based on the district’s overall costs and enrollment and is not specific to any individual student.” The sole purpose of this remand is to determine the “the annual per pupil cost from the record of the proceedings.” Such annual tuition costs and calculation of tuition must be consistent with N.J.S.A 18A:38-1 (b). Commissioner’s Decision, dated March 8, 2021, (page 3).

Accordingly, a hearing was held on April 23, 2021. Testimony was taken and Exhibits were received into evidence, and the record closed.

FACTUAL DISCUSSION

Testimony

Victor Tropeano

Victor Tropeano (Tropeano) is employed by respondent as a residency inspector within the legal department of the BOE. He is familiar with the petitioner’s case since he began investigating her residency in November 2019, and has kept up with petitioner’s whereabouts since his residency investigation began. He was aware that the minor child was disenrolled as a student of its schools on March 19, 2021. He testified further that shortly thereafter the disenrollment, the petitioner finally provided sufficient documentation that she is now domiciled in Elizabeth, and her child now permitted to attend free of charge. Tropeano also testified that he is familiar with the exhibits prepared

by the respondent which show the per pupil costs for students of the school district for the time frames when C.B. was enrolled in the schools but ineligible for public education as not being domiciled there, specifically from the beginning and throughout the school year of 2019-2020, and the beginning of the school year 2020-2021 until March 19, 2021. He testified also of his familiarity with the school calendar for those two years and presented the BOE's school calendars for those two years.

Based on the Exhibits and his evidence, none of which was refuted by the petitioner, the school calendar for 2019-2020 was 180 days commencing September 5, 2019 and ending June 15, 2020. (R-3). Further, and also not refuted by petitioner, the school calendar for 2020-2021 commenced on September 11, 2020 and the number of school days for that year that had elapsed from that day until the minor child was disenrolled was 112 (R-4).

Further, Tropeano testified to tuition rates charged to out of district students based on the Elizabeth Budget Worksheets for school years 2019-2020 (R-1) and 2020-2021 (R-2). Based on that evidence, the rates are charged in accordance with what grade the pupils attend and in accordance with the child's classification. There are several levels of classification for special needs education students. For children with autism the per diem rate for school year 2019-2020 was \$122.85; for school year 2020-2021, the per diem rate is \$171.57.

Therefore, the BOE charges petitioner with the entire cost of school year 2019-2020 \$22,113 (180 days times \$122.85) and for school year 2020-2021, from commencement of the school year until disenrollment March 19, 2021, \$19, 215.84 (112 days times \$171.57) for a combined cost of \$41,328.84.

The Petitioner, C.B.

C.B. offered no contrary competent testimony nor documentary evidence to refute or negate in any way the evidence of the BOE. She agreed that the school year for 2019-2020 was 180 days and that her child attended the Elizabeth public schools the entire year. She also agreed the 2020-2021 school year commenced September 11, 2020, that

her child attended the Elizabeth public schools the entire year and was disenrolled by notification by the BOE on March 19, 2021, and that the number of days of the school year to that date was 112. She also agreed that the school rates were as published by the Budget Worksheets submitted by the Board and had no contrary evidence to same. She also admitted that during this time her son received special services education for autism as a kindergarten and first grade student.

C.B.'s entire contention was that she be charged nothing because she was always domiciled in Elizabeth and that the school's determination that she had not established domicile there before her son began attending Elizabeth schools in 2019, which she previously appealed, and which was denied by the undersigned, and which determination the Commissioner affirmed, was simply incorrect. Aside from her own testimony that she maintained she was always domiciled in Elizabeth, she wanted to offer the testimony of a neighbor, and many documents, who and which would prove that since approximately 2016, she has been domiciled at a certain address in Elizabeth and therefore, notwithstanding the Initial and Final Decisions, her child was entitled to a free education by Elizabeth during the school years involved in the prior proceeding. She essentially wanted to a rehearing on the prior determination. Such an effort to undue the prior determination on those issues was not permissible as the issue of whether petitioner had established residency issue was not before the undersigned on this remand. Therefore, all of petitioner's testimony on these points were ruled irrelevant and the petitioner did not enter any competent testimony or documents to advance her case. In fact, she provided admissions that she knew she was going to be charged for the educational costs of special services for her autistic child at the rates charged by Elizabeth, that the child did attend the school for kindergarten and first grade for the entire school year of 2019-2020 and again for the school year of 2020-2021 until he was disenrolled March 19, 2021. She had no contrary evidence regarding the school calendar or the school per diem rates. Petitioner had no other competent testimony to offer and otherwise agreed with or could not refute the evidence of respondent.

FINDINGS OF FACT

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

1. The annual tuition cost was based on the BOE's worksheet budgets for school years 2019-2020 and 2020-2021 which contains the per diem rates for out of district students categorized by grade and by general and levels of special education.
2. Petitioner was charged for the time Ordered by the Initial Decision dated December 8, 2020, from the beginning of the 2019-2020 school year until the date he was disenrolled on March 19, 2021, for a total of 292 days.
3. For the 180 day school year of 2019-2020, the per diem rate charged to out of district students receiving special education services for autism was \$122.85 which equals \$22,113 charged to petitioner for the entire school year For the 2020-2021 school year, the per diem rate charged to out of district students receiving special education services for autism was \$171.57, and the period being from beginning of that school year until disenrollment on March 19, 2021, a total of 112 days, which equals \$19, 215.84.
4. Accordingly, petitioner is charged with tuition for the period of attendance in the Elizabeth public schools from the beginning of the school year 2019-2020 until March 19, 2021 in the 2020-2021 school year with the sum of \$41,328.84.

LEGAL ANALYSIS

The Initial Decision of December 8, 2020 and the affirmed Final Decision of the NJ Commissioner of Education determined that, as petitioner had not established residency prior to entering her child as a student, and continued to attend there for nearly two years despite demands to prove her domiciliary or remove the child, tuition for a non-qualified student (not domiciled in Elizabeth) had to be paid by petitioner to the school from the beginning of school year 2019-2020, for the entire year, and for school year 2020-2021, until such time as the child was disenrolled or established a domicile in Elizabeth. At the

April 23, 2021 hearing on the narrow issue requiring the remand, it was uncontested that the child received special education services, specifically for autism, during the nearly two years of ineligible enrollment. The sole purpose of this remand was to clarify the amount owed to allow the Commissioner to “discern the annual per pupil cost from the record.”

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.

As correctly stated by respondent in its pre-hearing memorandum of April 20, 2021, the applicable statute N.J.S.A. 18A-38-1 (b) does not specify the assessed tuition be equal to the actual costs incurred by the District for education the particular student in issue. Instead, tuition assessment is measured by the average cost per pupil based on the District's overall costs and enrollment.

The actual cost per student which determines the tuition rate or rates for a given year is the local cost per student in average daily enrollment based on the student's grade. Tuition reimbursement is calculated on a student's ineligible enrollment based on the student's grade and program category consistent with N.J.A.C. 6A: 23-3.1. To arrive at the actual per pupil cost means to determine the average daily enrollment, based upon audited expenditures that year, for the purpose for which the tuition rate is being determined, and consistent with the grade program categories in N.J.S.A. 18A:7F-13 and 18A:7F-19, meaning regular education classes, preschool and kindergarten, grades one

through five, grades six through eight, grades nine through twelve, and special class programs defined in N.J.A.C. 6A:14-4.7.

Here the respondent provided uncontested evidence that during the child's ineligible period, he was enrolled in special class programs, specifically for autism and that the per diem rates, \$122.85 for the entire 180 day school year 2019-2020, and per diem rate of \$171.57 for the 2020-2021 school year up to the date of disenrollment were derived from the average daily enrollment based on audited expenditures those two years, consistent with the grade and special class programs for those students. Accordingly, based upon the facts adduced at the April 23, 2021 hearing on remand and the legal principles cited above, I **CONCLUDE** that respondent is entitled to payment for tuition from petitioner for the aforesaid period of ineligible attendance, in the amount of \$41,328.84.

ORDER

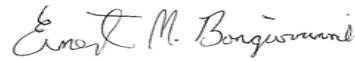
Based on the foregoing, it is hereby **ORDERED** that petitioner, C.B. is required to and shall be made to pay made to require to pay respondent \$41,328.84 for tuition reimbursement for the period that her for the period in the Elizabeth school years 2019-2020 and 2020-21 in which her minor child attended special education classes while not domiciled in Elizabeth.

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, P.O. 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.

April 28, 2021



DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

April 28, 2021

Date Mailed to Parties:

April 28, 2021

EB/id

APPENDIX

LIST OF WITNESSES

For Petitioner:

C.B.

For Respondent:

Vito Tropeano

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

None

For Respondent:

- R-1 2019-2020 Budget Worksheet, Tuition Rates for Out of District Students attending Elizabeth Public Schools
- R-2 2019-2020 Budget Worksheet, Tuition Rates for Out of District Students attending Elizabeth Public Schools
- R-3 Elizabeth Public Schools 2019-2020 School Calendar
- R-4 Elizabeth Public Schools 2020-2021 School Calendar