

**New Jersey Commissioner of Education**

**Final Decision**

N.S., on behalf of minor child, S.S.-B.,

Petitioner,

v.

Board of Education of the Borough of  
Magnolia, Camden County,

Respondent.

**Synopsis**

*Pro se* petitioner appealed the determination of the respondent Board that N.S. no longer resides in Magnolia – the family having relocated in April 2020 to North Carolina at the beginning of the COVID 19 pandemic – and, therefore, S.S.-B. was not eligible to receive a free public education in the Magnolia public schools during the 2020-2021 school year. The Board filed a motion for summary decision and sought tuition reimbursement for the period of S.S.-B.’s ineligible attendance.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; during the 2020-2021 school year, S.S.-B. remained enrolled in the Magnolia school district and attended school remotely despite the fact that the family had relocated to North Carolina in April 2020; petitioner and his family are living out of state with S.S.-B.’s grandmother, and are not homeless; and petitioner has indicated that S.S.-B will not return to the Magnolia residence until such time as there is a “safe” COVID 19 vaccine for children. The ALJ concluded that S.S.-B. was not entitled under *N.J.S.A.* 18A:38-1(a) to attend school in Magnolia during the 2020-2021 school year. Accordingly, the ALJ granted summary decision to the respondent and ordered that petitioner reimburse the Board \$18,599.40 for tuition costs associated with the attendance of S.S.-B. in the Magnolia Township school district for the 2020-2021 school year.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ and adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner directed – pursuant to *N.J.S.A.* 18A:38-1b – that petitioner reimburse the Board in the amount of \$18,599.40 for tuition costs incurred during the 2020-2021 school year, when S.S.-B. was not eligible to attend school in Magnolia.

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.

211-21

OAL Dkt. No. EDU 01430-21

Agency Dkt. No. 15-1/21

**New Jersey Commissioner of Education**

**Final Decision**

N.S., on behalf of minor child, S.S.-B.,

Petitioner,

v.

Board of Education of the Borough of  
Magnolia, Camden 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 failed to sustain his burden of establishing that he was a domiciliary of Magnolia during the 2020-2021 school year. The Commissioner further concurs with the ALJ's conclusion that the minor child was, therefore, not entitled to a free public education in the District's schools during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in the District. Therefore, the Board is entitled to tuition reimbursement in the amount of \$18,599.40 for the 2020-2021 school year, during which time petitioner's minor child was ineligible to attend school in Magnolia.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$18,599.40 for the 2020-2021 school year, for tuition costs incurred during the time period in which S.S.-B. was ineligible to attend school in Magnolia. The petition of appeal is hereby dismissed.

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

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

Date of Decision: October 7, 2021  
Date of Mailing: October 7, 2021

---

<sup>1</sup> 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**

**SUMMARY DECISION**

OAL DKT. NO. EDU 01430-21

AGENCY DKT. NO. 15-1/21

**N.S. ON BEHALF OF MINOR CHILD,**

**S.S.-B.,**

Petitioner,

v.

**BOROUGH OF MAGNOLIA BOARD  
OF EDUCATION, CAMDEN COUNTY,**

Respondent.

---

**N.S.**, on behalf of minor child, S.S.-B., petitioner, pro se

**William C. Morlock, Esq.**, for respondent (Parker McCay, P.A., attorneys)

Record Closed: August 20, 2021

Decided: August 26, 2021

BEFORE **CATHERINE A. TUOHY, ALJ**:

**STATEMENT OF THE CASE**

Petitioner N.S., the father of minor child S.S.-B., appeals the determination by the respondent Borough of Magnolia Board of Education, Camden County (the "Board") that S.S.-B. did not reside within the Borough of Magnolia School District since April of 2020, and that tuition reimbursement is required. The Board alleges that the minor child S.S.-

B. was not residing at the address provided by the petitioner and seeks repayment of tuition. At issue is whether S.S.-B. was entitled to be enrolled in the district for purposes of receiving a thorough and efficient public education free of charge for the 2020-2021 school year, pursuant to N.J.S.A. 18A:38-1.

### **PROCEDURAL HISTORY**

By letter, dated January 8, 2021, the Board notified N.B. that S.S.-B. was ineligible to continue to attend school within the district as they were no longer domiciled in the District consistent with N.J.S.A. 18A:38-1. The petitioner filed a pro se residency appeal on or about January 25, 2021. The Board filed an answer and counterclaim for tuition on February 2, 2021. The Department of Education Office of Controversies and Disputes transmitted this matter to the Office of Administrative Law (OAL) where it was filed on February 4, 2021 as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Several telephone conferences were conducted, and discovery was exchanged. The Board filed a motion for summary decision on June 22, 2021. An email was sent to the parties confirming the filing of the summary decision motion and advising petitioner that any opposition would need to be filed by July 12, 2021. A follow-up email was sent to the parties on August 20, 2021. Petitioner has not filed any opposition to the summary decision motion.

### **STATEMENT OF FACTS**

The facts are not in dispute, and I **FIND**:

Petitioner and S.S.-B. were residing in Magnolia Township until the family left the Township in approximately April 2020 and “fled” to North Carolina due to COVID-19 as the cases were fewer there compared to New Jersey. (See April 14, 2020, email from S.S.'B.'s mother to district employee Ms. Augustine, attached to Certification of Counsel as Exhibit E.) Petitioner still maintains a lease in Magnolia although they have not resided there since the family left for North Carolina in April 2020. The petition, as well as answers to interrogatories (attached to Certification of Counsel as Exhibit B) indicated that S.S.-B. is a cancer survivor with a heart condition who is susceptible to air-borne illness and the

residents of their apartment building were not adhering to all safety protocols. Petitioner further indicated that since the pandemic he had been having difficulty getting a job. S.S.-B.'s grandmother lives in North Carolina and offered them financial assistance and took them in. Petitioner's residency appeal was notarized by a notary in Mecklenberg County, North Carolina on January 25, 2021. Petitioner N.S. has since obtained employment in North Carolina with the State of North Carolina. (See April 16, 2021, email of William Morlock to S.S.-B.'s parents attached to Certification of Counsel as Exhibit C.) S.S.-B. has not slept in their Magnolia, N.J. residence since the family left for North Carolina in approximately April of 2020. Petitioner has indicated that S.S.B. will not return to reside in Magnolia until there is a safe COVID vaccine for children. (See answer to interrogatory #10, Exhibit B to Certification of Counsel.) Petitioner responded to a request for admissions on May 24, 2021, and admitted that they are not homeless. (Exhibit A to Certification of Counsel.)

I also **FIND** as fact that the per pupil tuition rate for the Magnolia Township Board of Education for the 2020-2021 school year was \$103.33 a day and that there were 180 school days in the 2020-2021 school year, amounting to annual tuition of \$18, 599.40 for the 2020-2021 school year. (See annexed Certification of Greg Gontowski, Business Administrator.)

I further **FIND** as fact that S.S.-B. was not domiciled in the district during the 2020-2021 school year.

### **LEGAL ANALYSIS**

A motion for summary decision shall be granted "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." N.J.A.C. 1:1-12.5(b).

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 alleged disputed issue in favor of the non-moving party. 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, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249 (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 252. I **CONCLUDE** that this matter is ripe for summary decision.

The issue in this appeal is whether S.S.-B. had been a domiciled student in the Magnolia School District during the 2020–2021 school year. It is clear from the record that he has not, since he and his family relocated to North Carolina in April of 2020.

Public schools are required to provide a free education to individuals between the ages of five and twenty years in certain circumstances, including individuals 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 the domicile of the parent, custodian, or guardian. P.B.K. ex rel. minor child E.Y. v. Bd. of Educ. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001). Thus, a child would routinely attend school in the district where his or her parents live. The petitioner has the burden of proof in a determination of residency eligibility. N.J.S.A. 18A:38-1(b)(2).

From the evidence submitted, it is clear that S.S.-B. has not been domiciled in the district while attending school there. On April 14, 2020 S.S.-B.’s mother sent a text message to a district employee, Ms. Augustine, confirming their relocation to North Carolina. N.S. has since obtained employment with the State of North Carolina. The family has been residing in North Carolina since April 2020, to the present time. It is clear that petitioner’s domicile is now in North Carolina where they have been residing for more than one year. Petitioner’s employment with the state is further evidence that he intends for it to be his true, fixed, permanent home and principal establishment, and to which whenever he is absent, has the intention of returning.

N.J.A.C. 6A:22-3.1(a)(1) provides as follows:

A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district.

S.S.-B. was not domiciled in the district during the 2020-2021 school year. Accordingly, I **CONCLUDE** that respondent is entitled to summary decision that S.S.-B. was not entitled to attend school in the district and receive a free public education there during that time frame pursuant to N.J.S.A. 18A:38-1(a).

A school board is entitled to recover tuition from a parent or guardian of a child found ineligible to attend a school in its district. N.J.S.A. 18A:38-1(b)(2). S.S.-B. was not entitled to a free public education in the Magnolia Township district based upon the above. Tuition for school year 2020-2021 was \$18,599.40 (180 school days x \$103.33 per pupil tuition rate per day.) Therefore, I further **CONCLUDE** that respondent is entitled to summary decision on its counterclaim for reimbursement from N.S. for the cost of providing an education to S.S.-B. in the sum of \$18,599.40 for the 2020-2021 school year.

### **ORDER**

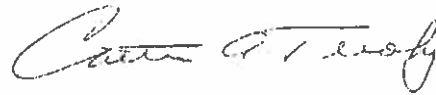
Based upon the foregoing, it is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**; that the petition of N.S. o/b/o S.S.-B., is hereby **DISMISSED**; and that respondent's counterclaim be **GRANTED**. It is further **ORDERED** that N.S. reimburse respondent the total sum of \$18, 599.40 for tuition costs associated with the attendance of S.S.-B. in the Magnolia Township school district for the 2020-2021 school year.

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.



August 26, 2021 \_\_\_\_\_

DATE

\_\_\_\_\_  
**CATHERINE A. TUOHY, ALJ**

Date Received at Agency:

August 26, 2021 \_\_\_\_\_

Date Mailed to Parties:

August 26, 2021 \_\_\_\_\_

CAT/tat

**Appendix**

**Exhibits**

For Petitioner:

None

For Respondent:

Notice of Motion for Summary Decision; Brief in Support of Respondent's Motion for Summary Decision; Certification of Counsel with attached Exhibits A – E; and Certification of Greg Gontowski