

New Jersey Commissioner of Education

Final Decision

R.G. on behalf of minor child, N.G.,

Petitioner,

v.

Board of Education of the Township of East Brunswick,
Middlesex County,

Respondent.

Synopsis

Petitioner appealed the determination of the respondent Board that his minor child was not entitled to a free public education in the East Brunswick School District for the 2020-2021 school year. The Board contended that N.G. was registered to attend East Brunswick schools using a Milltown, New Jersey home address. However, the Board discovered in October 2020 that N.G. had been living in Carteret, New Jersey since the end of the prior school year. The Board filed a motion to dismiss the petition, and a counterclaim for tuition for N.G.'s period of ineligible attendance.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A. 18A:38-1(b)(2)*, if a school district finds that the parent or guardian of a child who is attending school in the district is not domiciled in the district, the superintendent or administrative principal may apply to the board of education for the removal of the child; here, it is undisputed that, for the entirety of the 2020-2021 school year, R.G. and his family, including N.G., were residing in Carteret, New Jersey; further, it is undisputed that the last known residence of R.G. and his family within the geographic boundaries of the East Brunswick school district was occupied by and deeded to another family who enrolled their child in the District at the beginning of the 2020-2021 school year, utilizing this address to establish domicile within the District. The ALJ concluded that: petitioner failed to carry his burden of proof that N.G. was domiciled in the District during the 2020-2021 school year; and N.G. was therefore not entitled to attend school in the District free of charge during that time, pursuant to *N.J.S.A. 18A:38-1(a)*. Accordingly, the ALJ granted the Board's motion to dismiss as well as the counterclaim for tuition in the amount of \$16,314.00 for N.G.'s ineligible attendance in East Brunswick schools during the 2020-2021 school year.

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. The petitioner was ordered to reimburse the Board for tuition in the amount of \$16,314.00 for the 2020-2021 school year. 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.

New Jersey Commissioner of Education

Final Decision

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Petitioner,

v.

Board of Education of the Township of
East Brunswick, Middlesex 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 such 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 East Brunswick during the 2020-21 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 East Brunswick. Therefore, the Board is entitled to tuition reimbursement in the amount of \$16,314.00 for the entire 2020-21 school year, during which time the minor child was ineligible to attend school in East Brunswick.

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 \$16,314.00 for tuition costs incurred during the time period in which N.G. was ineligible to attend school in East Brunswick. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

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

¹ 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

GRANTING RESPONDENT'S

MOTION FOR SUMMARY DECISION

OAL DKT. NO. EDU 02702-21

AGENCY DKT. NO. 23-2/21

**R.G. ON BEHALF OF
MINOR CHILD N.G.,**

Petitioner,

v.

**TOWNSHIP OF EAST BRUNSWICK
BOARD OF EDUCATION,
MIDDLESEX COUNTY,**

Respondent.

R.G., petitioner, pro se

Matthew J. Giacobbe, Esq., for respondent (Cleary, Giacobbe, Alfieri, Jacobs,
LLC, attorneys)

Danielle A. Panizzi, Esq., co-counsel for respondent and on the brief (Cleary,
Giacobbe, Alfieri, Jacobs, LLC, attorneys)

Record Closed: August 10, 2021

Decided: September 2, 2021

BEFORE **DAVID M. FRITCH, ALJ**:

STATEMENT OF THE CASE

The petitioner is challenging the residency determination made by the Township of East Brunswick Board of Education (Board) with regard to a minor child, N.G. N.G. was, for the 2020/21 school year, a tenth-grade student enrolled at East Brunswick High School (EBHS). N.G. was enrolled at EBHS utilizing a home address in Milltown, New Jersey. In October 2020, the Board learned that N.G. had been living in Carteret, New Jersey since the end of the prior school year. The Board contends that, because N.G. was not domiciled in the Township of East Brunswick during the 2020/21 school year, he was not entitled to a free, public education from the Township of East Brunswick School District (District). The petitioner challenges the Board's residency determination. The Board further counterclaims seeking reimbursement from the petitioner for tuition, based on a per diem tuition rate, for N.G.'s period of ineligible attendance at EBHS.

PROCEDURAL HISTORY

On January 28, 2021, the Board issued a Final Notice of Ineligibility and Removal to the petitioner, seeking N.G.'s disenrollment from EBHS and seeking reimbursement based on a per diem tuition rate for N.G.'s period of ineligible attendance at EBHS. The petitioner's appeal of this action was transmitted to the Office of Administrative Law (OAL) on March 16, 2021, for resolution as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1. The respondent filed a motion for summary decision on July 21, 2021. Pursuant to N.J.A.C. 1:1-12.5(b), the record remained open for twenty days to permit the petitioner to file a response showing that there is a genuine issue which can only be determined in an evidentiary hearing. When no response was filed by the petitioner within this twenty-day period prescribed by N.J.A.C. 1:1-12.5(b), the record closed on August 10, 2021, leaving the respondent's motion in this matter unopposed.

FACTUAL DISCUSSION

A summary of the pertinent facts is undisputed and I **FIND** the following **FACTS**:

1. N.G. was a tenth-grade student at EBHS during the 2020/21 school year. (Giuliana Cert. at ¶ 1.)

a. In enrolling N.G. for the 2020/21 school year, the petitioner indicated that his address was 48 Louise Drive, Milltown, New Jersey 08850. (Id. at ¶ 3.)

2. At the outset of the 2020/21 school year, another family registered for attendance in the District utilizing the 48 Louise Drive, Milltown, New Jersey address. (Id. at ¶ 4.)

a. The other family produced a deed to the 48 Louise Drive, Milltown, New Jersey address as proof of their residency within the geographic boundaries of the District. (Ibid.)

3. Representatives from the District contacted the petitioner by telephone to inquire about their residency. (Id. at ¶ 5.) In October 2020, the petitioner confirmed to a representative of the District that his family was residing in Carteret, New Jersey. (Id. at ¶ 6.)

a. The petitioner confirmed in a follow-up email to representatives of the District that he and his family left their residence at 48 Louise Drive, Milltown New Jersey “at the end of last school year.” (Id. at Ex. A.) He explained that he and his family were staying with his mother in Carteret to “take[] care of her through covid.” (Ibid.) The petitioner indicated that his “goal is to move back [to East Brunswick] by November or December 2020 at the latest.” (Ibid.)

4. On October 29, 2020, the respondent sent the petitioner an invoice for N.G.'s attendance at EBHS for the 2020/21 school year for the period between September 8, 2020 and November 30, 2020. (Id. at Ex. B.) This invoice sought a payment from the petitioner of \$4,882.78. (Ibid.)

5. The petitioner contacted the District's finance department to obtain a payment plan for N.G.'s tuition. On November 10, 2020, the District's finance department presented the petitioner with a payment plan option for the outstanding tuition bill. (Id. at Ex. C.) This plan would have allowed the petitioner to pay \$3,000 up front with the balance of the tuition due November 30, 2020. (Ibid.) The petitioner would also be obliged to restore residency in East Brunswick in December 2020, or pay additional weekly tuition for EBHS until he re-establishes residency in the District. (Ibid.)

6. The District did not receive any tuition payments from the petitioner, and on December 2, 2020, the District contacted the petitioner via email. (Id. at ¶ 11.) This email communication informed the petitioner that, because he and his family did not reside in East Brunswick, the District was requiring N.G. to be withdrawn from EBHS. (Id. at Ex. C.) Although the District had attempted to make arrangements for N.G. to continue as a tuition student, because the District had not received any payments or a signed agreement from the petitioner to pay the outstanding tuition, the District was seeking N.G. to withdraw from EBHS and enroll in school in Carteret as he was currently living in Carteret, New Jersey. (Ibid.)

7. On December 18, 2020, the District sent the petitioner a Preliminary Notice of Ineligibility. (Id. at ¶ 12; Id. at Ex. E.) This notice informed the petitioner that, because his son, N.G., was no longer domiciled in the District, he was no longer eligible to obtain a free public education from the District. (Ibid.) The notice also notified the petitioner that he could challenge this decision at a hearing before the Board. (Ibid.)

8. On January 7, 2021, a formal residency hearing was held before the Board. (Id. at ¶ 13.) The petitioner appeared at this hearing and offered testimony on his own

behalf. (Id. at Ex. F.) At this hearing, the petitioner admitted that he and his family have resided in Carteret, New Jersey for the entirety of the 2020/21 school year. (Ibid.)

9. On January 11, 2021, Dr. Victor Valeski, Superintendent of the East Brunswick Public Schools, contacted the petitioner in writing. (Id.)

a. This letter informed the petitioner that, in order for N.G. to remain enrolled in a District school for the remainder of the 2020/21 school year, the petitioner was required to provide “proof of residency via certified lease agreement or deed dated ***no later than February 1, 2021*** to re-establish domicile within the Township of East Brunswick.” (Id. (emphasis in original).)

b. The letter also sought payment of the outstanding tuition for N.G.’s attendance at EBHS for the 2020/21 school year. (Id.) The District sought payment for N.G.’s ineligible attendance at EBHS at the per diem rate of \$90.63 for each day of ineligible attendance. (Id.) For the period between September 8, 2020, and January 31, 2021, the outstanding tuition balance sought by the District was \$8,598.59. (Id.) The District sought payment of the outstanding tuition in full no later than January 21, 2021.

c. If the petitioner did not meet the two requirements of providing proof of residency in the Township of East Brunswick by February 1, 2021, and remitting payment in full for the \$8,598.59 back tuition, the Board would vote at its next meeting on January 21, 2021, on “whether to permanently remove [N.G.] from the East Brunswick Public School District.” (Id.)

10. On January 21, 2021, the Board met and found N.G. ineligible for a free public education from the District because he and his family resided in Carteret, New Jersey for the entirety of the 2020/21 school year. (Id. at Ex. G.)

11. On January 28, 2021, the Board issued a Final Notice of Ineligibility and Removal to the petitioner informing him of the Board’s decision and his rights to appeal the Board’s determination. (Id. at Ex. G.)

12. The cost of tuition for tenth-grade general education students enrolled in the District for the 2020/21 school year is \$16,314. (Id. at ¶ 17.) The per diem rate is \$90.63 per day. (Id. at ¶ 18.)

13. The cost for tuition for N.G.'s attendance at EBHS for the 2020/21 school year, from September 8, 2020, through June 23, 2021, is \$16,314. (Id. at ¶ 19. See also Id. at Ex. H.)

14. To date, the petitioner has not made any payments to the District for N.G.'s tuition for the 2020/21 school year. (Id. at ¶ 20.)

LEGAL DISCUSSION

Public schools are free to persons over five and under twenty-five years of age who are domiciled within the school district. N.J.S.A. 18A:38-1(a) and N.J.A.C. 6A:22.3.1(a), which sets forth the right of a student to a free public education, states in pertinent parts:

Public schools shall be free to the following persons over five and under twenty years of age:

a. Any person who is domiciled within the school district[.]

Pursuant to N.J.A.C. 6A:22-3.1(a)(1), a student is eligible to attend a school district if he or she is domiciled within the school district, and 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.

“Domicile” is defined as “the place where [a person] has his [or her] true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has an intention of returning.” T.B.W. ex rel. A.W. v. Bd. of Ed. of the Township of Belleville, Essex County, 1998 N.J. AGEN LEXIS 122, Agency Dkt. No. 159-5/96, 1998 WL 668678 (N.J. Adm. June 18, 1998). As the court noted in Collins v. Yancey, 55 N.J. Super. 514, 520–21, 151 A.2d 68

(Law Div. 1959), a person may have several residences or places of abode, but only one domicile at a time. Id.

[D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist., 366 N.J. Super. 269, 273–74 (App. Div. 2004).]

A child's domicile is normally that of his or her parents. Somerville Bd. v. Manville Bd., 332 N.J. Super. 6, 12 (App. Div. 2000), aff'd, 167 N.J. 55 (2001). 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. 1998), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051 (1999). The acts, statements and conduct of the individual, as viewed in light of all circumstances, determine a person's true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959). A choice of domicile by a person, irrespective of his motive, will be honored "provided there are sufficient objective indicia, by way of proofs, supporting the actual existence of that domicile." In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991).

If a school district finds that the parent or guardian of a child who is attending school in the district is not domiciled in the district, the superintendent or administrative principal may apply to the board of education for the removal of the child. N.J.S.A. 18A:38-1(b)(2). The parent or guardian is entitled to a hearing before the board and if, in the judgment of the board, the parent or guardian is not domiciled within the district, the board may order the transfer or removal of the child from school. Id. The parent or guardian may contest the board's decision before the Commissioner within twenty-one days of the date of the decision and is entitled to a hearing. Id.

In challenging the findings of a board regarding a child's eligibility to attend school in the district, parents have the burden of establishing domicile in the school district by a preponderance of the evidence. Y.E. ex rel. E.E. v. State-Operated Sch. Dist. of the City of Newark, No. A-6009-06T3, 2008 WL 2492258, at *9 (App. Div. 2008); N.J.S.A. 18A:38-1(b)2. A student is a resident of a school district if his parent or guardian has a permanent home in the district such that "the parent or guardian 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).

It remains factually undisputed on the record in this matter that, for the entirety of the 2020/21 school year, R.G. and his family, including N.G., were residing in Carteret, New Jersey. (Giuliana Cert. at ¶ 6. Id. at Ex. A.) It is further factually undisputed on this record that the last known residence of R.G. and his family within the geographic boundaries of the District was occupied by and deeded to another family who enrolled their child in the District at the beginning of the 2020/21 school year utilizing this address to establish domicile within the District. (Id. at ¶ 4.) Although the petitioner has indicated that his “goal is to move back [to East Brunswick] by November or December 2020 at the latest” (id. at Ex. A), there is no evidence on this record presented to indicate that the petitioner has done so and the petitioner has produced no evidence that they possess a permanent home within the geographic boundaries of the District to return to at some future date. N.J.A.C. 6A:22-3.1(a). In the absence of any evidence that they possessed a permanent home in the District during the 2020/21 school year, the petitioner has failed to establish that N.G. was domiciled within the geographic boundaries of the District for that school year. I **CONCLUDE**, therefore, that R.G. has failed to carry his burden of proof that N.G. was domiciled in the District during the 2020/21 school year. N.J.S.A. 18A:38-1(b)(2). Accordingly, I **CONCLUDE** that N.G. was not entitled to attend school in the District and receive a free public education there during that time pursuant to N.J.S.A. 18A:38-1(a).

In its counterclaim, the Board seeks tuition for the period of ineligible attendance. 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). The Commissioner of Education is authorized to assess tuition prorated to the time of the student’s ineligible attendance in the schools of the district, and tuition is 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. N.J.S.A. 18A:38-1(b)(2).

The applicable per-pupil cost for the 2020/21 school year for attendance at EBHS was \$16,314. (Giuliana Cert. at ¶ 19.) This amount calculates to $\$16,314/180 = \90.63 per day. Because N.G. moved out of the District and remained domiciled outside the District for the entirety of the 2020/21 school year, the total amount of tuition for N.G.'s ineligible attendance at EBHS totals \$16,314. In view of the foregoing, I **CONCLUDE** that the petitioner should pay to the Board tuition in the amount of \$16,314 for the period of N.G.'s ineligible attendance at EBHS during the 2020/21 school year. I **FURTHER CONCLUDE** that N.G. should be disenrolled from the East Brunswick Public Schools.

ORDER

Based on the foregoing, it is **ORDERED** that the respondent's motion to dismiss the petition is **GRANTED** and the petitioner's Petition of Appeal be and hereby is **DISMISSED**.

It is **FURTHER ORDERED** that R.G. pay to the Board tuition in the amount of \$16,314 for the period of his son's ineligible attendance at the East Brunswick public schools during the 2020/21 school year and that N.G. be disenrolled from the East Brunswick Public Schools.

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.

September 2, 2021
DATE


DAVID M. FRITCH, ALJ

Date Received at Agency: September 2, 2021

Date Mailed to Parties: September 2, 2021

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