

## New Jersey Commissioner of Education

### Final Decision

C.O., on behalf of minor child, J.S.,

Petitioner,

v.

Board of Education of Lenape Regional  
High School District, Burlington County,

Respondent.

### Synopsis

In this matter on remand, *pro se* petitioner, a resident of Medford, New Jersey, challenged the determination of the respondent Board that his nephew, J.S., a non-resident student, is not eligible to attend school within the Lenape Regional High School District (LRHSD). Petitioner C.O. and his sister, M.L. – a resident of Sioux City, Iowa – filed affidavits in support of J.S.’s application for enrollment in the LRHSD as a non-resident student. Prior to February 2021, J.S. resided in Iowa with his mother, M.L. The Board filed a motion for summary decision, contending that, pursuant to *N.J.S.A. 18A:38-1* and *N.J.A.C. 6A:1-1 et. seq.*, J.S. did not meet the eligibility criteria to attend the LRHSD as an affidavit student; further, the Board sought tuition reimbursement for the period of J.S.’s ineligible attendance. In a decision issued September 7, 2021, the Commissioner concurred with the ALJ that petitioner failed to establish that his nephew, J.S., was a domiciliary within the LRHSD and that J.S. met the criteria to be enrolled as an affidavit student. However, the record lacked specific information regarding the number of days that J.S. attended school in the LRHSD during the 2020-2021 school year. Accordingly, the Commissioner remanded the matter to the OAL for calculation of tuition due to the district for the period of J.S.’s ineligible attendance.

On remand, the ALJ found that: J.S. attended school in LRHSD for seventy-two days, from March 1, 2021 through the end of the 2020-2021 school year; the cost of tuition was \$99.44 per day; therefore, the Board is entitled to tuition reimbursement in the amount of \$7,159.68 for the time petitioner’s nephew, J.S., was ineligible to attend school in the District.

Upon review, the Commissioner concurred with the ALJ’s findings and adopted the Initial Decision of the OAL as the final decision in this matter. Petitioner was directed to reimburse the Board in the amount of \$7,159.68 for tuition costs incurred during the time period in which J.S. was ineligible to attend school in the District, 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.

313-21

OAL Dkt. No. EDU 02698-21, EDU 07802-21 (on remand)

Agency Dkt. No. 31-3/21

## New Jersey Commissioner of Education

### Final Decision

C.O., on behalf of minor child, J.S.,

Petitioner,

v.

Board of Education of Lenape Regional  
High School District, Burlington 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.

On September 7, 2021, the Commissioner issued a decision finding that petitioner failed to sustain his burden of establishing that his nephew, J.S., was a domiciliary of a municipality in the Lenape Regional High School District (District), and that J.S. did not meet the criteria to be enrolled as an affidavit student. The Commissioner further concluded that J.S. was, therefore, not entitled to a free public education in the District's schools during that time. The Commissioner found that the record lacked evidence regarding the number of days of ineligible attendance and remanded the matter to the OAL for further fact-finding on this issue, so that the total tuition owed to the Board could be calculated.

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.

Following remand, the record reflects that J.S. attended school in the district for seventy-two school days from March 1, 2021 until the end of the 2020-2021 school year, and the Commissioner concurs with the findings of the Administrative Law Judge regarding these dates. The cost of tuition was \$99.44 per day. Therefore, the Board is entitled to tuition reimbursement in the amount of \$7,159.68 for the time petitioner's nephew, J.S., was ineligible to attend school in the District.

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 \$7,159.68 for tuition costs incurred during the time period in which J.S. was ineligible to attend school in the District. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.

  
ANGELINA ALLEN-McMILLAN, Ed.S.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 6, 2021  
Date of Mailing: December 7, 2021



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. EDU 07802-21

AGENCY DKT. NO. 31-3/21

(ON REMAND OAL DKT. NO. EDU  
02698-21)

**C.O. on behalf of minor child J.S.,**

Petitioner,

v.

**LENAPE REGIONAL HIGH SCHOOL DISTRICT  
BOARD OF EDUCATION, BURLINGTON COUNTY,**

Respondent.

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**C.O. on behalf of minor child J.S., petitioner, pro se**

**R. Taylor Ruilova, Esq., for respondent (Comegno Law Group, P.C., attorneys)**

Record Closed: October 12, 2021

Decided: October 20, 2021

**BEFORE TRICIA M. CALIGUIRE, ALJ:**

**STATEMENT OF CASE**

Petitioner C.O. on behalf of J.S. challenges the decision of respondent, Lenape Regional High School (LRHS) Board of Education, Burlington County (Board) that minor child J.S., a non-resident student, is not eligible to attend school within the LRHS District (District), pursuant to N.J.S.A. 18A:38-1, and its accompanying regulations, N.J.A.C. 6A:1-1 et. seq.

### **PROCEDURAL HISTORY**

On January 29, 2021, petitioner filed a petition with the Commissioner of the New Jersey Department of Education pursuant to N.J.S.A 18A:6-9. On March 12, 2021, respondent filed a motion to dismiss in lieu of an answer. This motion was not decided by the Commissioner and was transmitted with the petition on March 16, 2021, to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

By letter dated April 30, 2021, a briefing schedule was issued and on May 28, 2021, petitioner responded to the motion to summary decision. On June 8, 2021, respondent submitted a reply brief. On July 21, 2021, an initial decision granting the motion for summary decision was rendered.

As set forth in his Decision of September 7, 2021, the Acting Commissioner of Education adopted the findings of fact and conclusions of law of the initial decision and ordered that the matter be remanded to the OAL for the calculation of the total amount of tuition that petitioner is responsible to pay for J.S.'s attendance in a District school. On September 30, 2021, respondent submitted the Affidavit of Matthew Webb in Support of Tuition Assessment. Petitioner was provided ten days to respond, but declined to do so, and the record closed on October 12, 2021.

### **FACTUAL DISCUSSION AND FINDINGS**

The material facts in this matter are not in dispute. To properly address the remand order, it is necessary to clarify the dates on which J.S. attended high school in the District; that information is found below. Based on the statements made by C.O and M.L. in their affidavits supporting J.S.'s application to attend LRHS District as a non-resident student, the statements of C.O. in the petition he filed to appeal the Board's decision to deny J.S.'s application, C.O.'s May 28, 2021 letter, and the certifications of Matthew Webb, I **FIND** the following **FACTS**:

1. LRHS District is a regional public school district serving eight towns in Burlington County, New Jersey. The District operates four high schools, including Shawnee High School, Medford Township (Shawnee HS).
2. C.O. is a resident of the District, residing in Medford Township.
3. J.S. is C.O.'s fifteen-year-old nephew. Prior to February 3, 2021, J.S. resided with his mother, M.L., in Sioux City, Iowa.
4. On February 4, 2021, C.O. applied to respondent for J.S. to attend Shawnee HS in LRHS District as a non-resident pupil ("affidavit student"). Br. In Support of Respondent's Motion for Summary Disposition (March 15, 2021), Ex. A [LRHS District Affidavit Application of C.O. on behalf of J.S. (January 28, 2021)]. In this application, C.O. stated that J.S. would reside with him in the District for the duration of the calendar year and "indefinitely [sic]." Id., Ex. A at 2, 4.
5. M.L. submitted an affidavit in support of J.S.'s application in which she stated that J.S. would remain in C.O.'s home "until completion of high school," and would return to her home upon graduation. Id., Ex. B [LRHS District Affidavit of M.L., Non-Resident Parent, on behalf of J.S. (January 29, 2021), at 1, 3].
6. In her affidavit, M.L. states that J.S. is not residing with her due to "schooling, behavior, counseling." Id., Ex. B at 1, 2. Further, she states that she is able to support her son economically. Id., Ex. B at 2.
7. On February 9, 2021, during a telephone conversation with District Assistant Superintendent Matthew Webb (Webb), C.O. stated that in school in Iowa, J.S. was "falling through the cracks"; that school in Iowa was still all-remote [due to COVID-19 emergency measures]; J.S.'s Iowa teachers had not kept him up-to-date, he had fallen behind in school and was at risk of repeating ninth grade; and C.O. wanted J.S. to have a good education in New Jersey. Certification of

Matthew Webb in Support of Respondent's Motion for Summary Decision (March 12, 2021), at ¶¶ 12, 13.

8. In a letter to the undersigned, C.O. elaborated on the reasons J.S. left his mother's home in Iowa to live with C.O. and his family in New Jersey, stating that J.S. "is not here for an education, [rather J.S.] is here to be held accountable to get an education." Ltr. of Petitioner in Opposition to Respondent's Motion to Dismiss (May 27, 2021) (by electronic mail only).<sup>1</sup> Further, by living with C.O., J.S. will get "the discipline he needs to thrive." Ibid.
9. During the February 9, 2021 telephone conversation, Webb informed C.O. that he would not recommend approval of J.S.'s application as he did not meet the legal requirements for eligibility as an affidavit student. Webb Cert., at ¶ 15. In response, C.O. asked Webb to ignore relevant law. Id. at ¶ 16.
10. C.O. requested and was provided a phone conference with District Superintendent Dr. Carol Birnbohm (Dr. Birnbohm). During a telephone conversation on February 10, 2021, Dr. Birnbohm stated that her administration would recommend that J.S. was not eligible as an affidavit student and explained to C.O. the process for appealing the Board's final decision on the matter. Id. at ¶ 25.
11. To date, C.O. has not provided respondent (or this tribunal) proof that he and/or his wife, L.O., have been named temporary or permanent guardian(s) for J.S. by court order.<sup>2</sup> Id. at ¶ 28. C.O. stated that it is his intention to assume full legal custody of J.S. and that he would meet with an attorney on June 1, 2021, to begin the legal process. Ltr. of Pet'r, at 1.

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<sup>1</sup> It is noted here that the regulations require an affidavit in response to a motion for summary decision, N.J.A.C. 1:1-12.5(b), and that the regulations permit the judge latitude to take "actions as are necessary for the . . . fair conduct of the . . . proceeding." N.J.A.C. 1:1-14.6(p). C.O.'s undated, unsigned letter in lieu of an affidavit does not prejudice respondent here as the non-corroborated hearsay statements in C.O.'s letter do not raise issues of material fact that must be determined in an evidentiary proceeding.

<sup>2</sup> After his telephone call with Dr. Birnbohm, C.O. submitted to respondent a temporary guardianship agreement signed by M.L. on February 12, 2021. Webb Cert., ¶ 26; Br. of Resp't, Ex. C.

12. On February 17, 2021, the Board adopted the recommendation of the District administration and denied C.O.'s application for J.S. to attend Shawnee HS as an affidavit student and on February 18, 2021, formal written notice of this decision was sent to C.O. Webb. Certif., Ex. E.
13. The Board's February 18, 2021, notice included the statement that C.O. is responsible to pay tuition for J.S. for any period of ineligible attendance, including the duration of an appeal of the Board's decision. Ibid. Further, C.O. was notified that the approximate rate of tuition at the District's schools for the 2020-2021 school year was \$99.44/day. Ibid.
14. On February 23, 2021, C.O. filed an appeal with the Commissioner of Education. Pursuant to N.J.S.A. 18A:38-1, this appeal was filed within twenty-one days of the Board's decision and therefore, J.S. began attending Shawnee HS.
15. J.S. attended Shawnee HS from March 1, 2021, through the last day of the 2020-2021 school year, June 18, 2021, which totals seventy-two school days. Affidavit of Matthew Webb in Support of Tuition Assessment (September 30, 2021), ¶¶ 6, 7.
16. In this matter, C.O. asks the Commissioner to permit J.S. to attend Shawnee HS as an affidavit student. In his petition, he acknowledged the statements of his sister, M.L., and in his letter to the undersigned, C.O. states his understanding that M.L. "may have worded the affidavit for the school incorrectly." Ltr. of Pet'r., at 1.

### LEGAL ANALYSIS AND CONCLUSION

#### Respondent's Motion to Dismiss Treated as Motion for Summary Decision

Respondent's motion was filed in accordance with N.J.A.C. 6A:3-1.5(g), which permits the filing of a motion to dismiss in lieu of an answer. Respondent argued that the "Board is entitled to summary disposition as a matter of law," and then presented arguments for an order



granting summary decision under N.J.A.C 1:1-12.5(b). Br. in Support of Respondent's Motion for Summary Disposition (March 12, 2021), at 6. Therefore, respondent's motion to dismiss was treated as a motion for summary decision under N.J.A.C. 1-12.5(b), and petitioner was provided references to the OAL website for guidelines on preparing a response.

### **Standard for Deciding the Motion for Summary Decision**

It is well-established that if there is no genuine issue as to any material fact, a moving party is entitled to prevail as a matter of law. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a fact-finding hearing should be avoided "when the evidence is so one-sided that one party must prevail as a matter of law." Brill guides as follows:

[A] determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion 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 factfinder to resolve the alleged disputed issue in favor of the non-moving party.

[id. at 540.]

In explaining the standard to be applied in summary motion practice, the Brill Court explained:

The same standard applies to determine whether a prima facie case has been established by the party bearing the burden of proof in a trial. . . . If a case involves no material factual disputes, the court disposes of it as a matter of law by rendering judgment in favor of the moving or non-moving party.

[id. at 536-3.7.]

As discussed above, I **CONCLUDE** that the parties raise no dispute with respect to material facts and the following issues can be decided as a matter of law:

1. Whether J.S. is eligible to attend Shawnee HS as a non-resident affidavit student, pursuant to N.J.S.A. 18A:38-1.
2. Whether the District is entitled to tuition reimbursement from C.O. for the costs of J.S. attending school in the District and if so, the amount due.

The parent, or in this case, petitioner C.O., has the burden of proving by a preponderance of the evidence that the minor, here J.S., is eligible for a free education in the District schools. N.J.S.A. 18A:38-1(b)(2).

C.O. contends that J.S. is entitled to a free education in the 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). J.S. is fifteen years old and, therefore, I **CONCLUDE** he meets the age requirements to be 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, and a child's domicile is normally that of his or her parents. 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). 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 (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).

Here, the evidence as to J.S. being domiciled in the District is mixed. J.S. has moved, physically, from Iowa to Medford, and is currently attending Shawnee HS. J.S.'s mother and C.O. took steps to register J.S. in the District, including the completion of registration documents and affidavits to support J.S.'s enrollment in the District. C.O. is adamant that he and his wife always intended for J.S. to completely transfer his domicile to New Jersey and from the beginning, C.O. has taken that position. But, prior to June 1, 2021, C.O. did not start the process required to obtain legal temporary or permanent custody of his nephew (even though he had notice of this requirement since February 2021).

Evidence that J.S. is not domiciled in the District includes that J.S.'s mother does not appear to intend for her son to stay in New Jersey indefinitely. In her sworn affidavit, M.L. stated that she was sending her son to New Jersey to complete his education, that he would return to Iowa upon graduation, and that she has the economic means to support him in Iowa. Even in the temporary guardianship document M.L. signed after learning of the deficiencies in her original affidavit, M.L. states that she is giving legal custody of J.S. to C.O. both "from December 31, 2020 to graduation" and "for as long as necessary." Br. of Resp't., Ex. C (emphasis added).

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[.]

M.L. gave a sworn statement that she is capable of supporting J.S. and noted no economic or family hardship that keeps her from caring for him. While she did not call the education J.S. would receive “free,” M.L. essentially swore that she was sending J.S. to New Jersey for the education he would receive. While C.O.’s intention to care for his nephew is clear, including offering J.S. a permanent home, to date C.O. has failed to provide sufficient proof that J.S. is domiciled in the District and/or was so domiciled at the time he was first registered in the District. Petitioner failed to establish that M.L. is incapable of supporting or providing care for J.S. due to family or economic hardship, notwithstanding C.O.’s criticism of M.L.’s parenting. Petitioner failed to establish that Iowa is not J.S.’s permanent home, the place where his mother resides and where he intends (and she expects him) to return.

Accordingly, in light of all of the facts and circumstances, I **CONCLUDE** that J.S. is not entitled to a free public education in the LRHS District. I **CONCLUDE** petitioner failed to satisfy the burden of proving that J.S. is domiciled with petitioner at his address in the LRHS District. I **CONCLUDE** that summary decision in favor of respondent is appropriate.

N.J.S.A. 18A:38-1(b)(1) provides that when the evidence does not support the claim of the resident, the resident shall be assessed tuition:

{F}or 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.

The record reflects that the actual cost of J.S.’s attendance in-District was \$99.44 per day for the 2020-2021 school year, and that J.S. enrolled at Shawnee HS on March 1, 2021. The last

day of the 2020-2021 school year was June 18, 2021. J.S. attended Shawnee HS for seventy-two school days.

N.J.A.C. 6A:22-6.3(a) provides that,

Tuition assessed pursuant to this section shall be calculated on a per-student basis for the period of a student's ineligible enrollment, up to one year, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23A-17.1. The individual student's record of daily attendance shall not affect the calculation.

Therefore, I **CONCLUDE** that petitioner is responsible to pay tuition for J.S.'s attendance at Shawnee HS in the amount of \$99.44/day from the date on which such attendance began, March 1, 2021, for each day school was in session without regard for days on which J.S. may have been absent, through the end of the 2020-2021 school year, June 21, 2021. Petitioner is responsible to pay respondent \$7,159.68.

### **ORDER**

I **ORDER** that the motion of respondent **Lenape Regional High School Board of Education** for summary decision in its favor is **GRANTED** and the pro se residency appeal of petitioner **C.O. on behalf of J.S.** is **DISMISSED**.

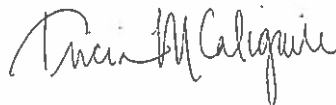
Further, I **ORDER** that petitioner **C.O.** shall pay respondent **Lenape Regional High School Board of Education** tuition in the amount of \$7,159.68, the total owed for seventy-two school days at \$99.44/day for each day during the 2020-2021 school year on which J.S. was enrolled in the Lenape Regional High School District.

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 initial 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.



October 20, 2021

DATE

TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

October 20, 2021

Date Mailed to Parties:

October 20, 2021

TMC/mp