

## New Jersey Commissioner of Education

### Final Decision

W.B. and D.B., on behalf of minor child, B.B.,

Petitioners,

v.

Board of Education of the Township of Wayne,

Passaic County,

Respondent.

### Synopsis

*Pro se* petitioners challenged the respondent Board's determination that B.B. is not entitled to attend Wayne Valley High School (Wayne Valley) because he is not residing within the attendance zone for that school; petitioners claim their move from Wayne Valley's attendance zone was due to financial hardship and the change in school assignment has caused B.B. anxiety in addition to his other learning issues; petitioners sought to have B.B. reassigned from Wayne Hills High School (Wayne Hills) to Wayne Valley, both of which are operated by the Wayne Township school district; and petitioners contended that the Board should exercise its discretionary powers under Policy #5120, which allows that the superintendent may assign a pupil to a school other than the one designated by the attendance area when such an exception is justified by circumstances and/or is in the best interests of the pupil.

The ALJ found, *inter alia*, that: a school board has discretionary power to determine which school students will attend within its district, so long as the decision is not contrary to law; the Board has applied Policy #5120 in an even-handed manner and B.B. was permitted to finish his last year of middle school in the Wayne Valley attendance zone, as is typical for pupils in their last year at a school; the Board considered whether attendance at Wayne Valley was required in the best interests of the pupil and determined that B.B. could obtain all the services he needs at either school; and B.B. would be entering his first year of high school whether at Wayne Hills or Wayne Valley. The ALJ concluded that the Board did not act in an arbitrary, capricious, or unreasonable manner when it denied petitioners' request to allow B.B. to attend Wayne Valley while the family resided in the attendance zone for Wayne Hills, and recommended that the petition be dismissed.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter 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.

April 5, 2021

OAL Dkt. No. EDU 05471-20  
Agency Dkt. No. 113-5/20

**New Jersey Commissioner of Education**  
**Final Decision**

W.B. and D.B., on behalf of minor child, B.B.,

Petitioners,

v.

Board of Education of the Township of Wayne,  
Passaic 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 (ALJ) that that Board did not act in an arbitrary, capricious, or unreasonable manner when it denied petitioners' request to allow their minor child to attend Wayne Valley High School while the family resided in the attendance zone for Wayne Hills High School.

According, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

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

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 5, 2021  
Date of Mailing: April 9, 2021

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<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**

OAL DKT. NO. EDU 05471-20

AGENCY DKT. NO. 113-5/20

**W.B. AND D.B., ON BEHALF OF MINOR**

**CHILD, B.B.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP**

**OF WAYNE, PASSAIC COUNTY,**

Respondent.

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**W.B. and D. B.**, petitioners pro se

**John G. Geppert, Jr.**, Esq., for respondent Wayne Township Board of Education  
(Scarinci Hollenbeck, attorneys)

Record Closed: February 10, 2021

Decided: February 18, 2021

BEFORE **GAIL M. COOKSON**, ALJ:

**STATEMENT OF THE CASE**

W.B. and D.B. (petitioners) appeal the Board of Education for the Township of Wayne's (Board) determination that their son, B.B., is not entitled to attend Wayne Valley High School because he is not residing within that attendance zone. Petitioners

claim their move from that attendance zone, albeit still within Wayne Township, was due to a hardship and has caused their son anxiety in addition to his learning issues.

The Board notified petitioners of its determination on May 11, 2020. [J-8.] They filed their petition of appeal directly with the Commissioner of Education on May 20, 2020. The Board filed its answer on June 10, 2020, and the matter was then transmitted to the Office of Administrative Law for determination as a contested case on June 17, 2020. The matter was assigned to me on or about July 17, 2020. Several case management conferences have been held in order to allow the parties to review new information. Thereafter, the hearing was scheduled and held on February 10, 2021, through the use of Zoom remote technology because of the continued New Jersey State of Emergency for the coronavirus pandemic. Insofar as the petitioners were not represented by counsel and the case was presented thoroughly by both sides, I determined that I did not need post-hearing submissions and I closed the record at the end of the hearing.

### **FINDINGS OF FACT**

Based upon due consideration of the pleadings and the testimonial and documentary evidence presented, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following facts:

Petitioners testified on their own and their son's behalf. They opened their case by remarking as to how proud they are of the progress B.B. has made in the Wayne school system and how amazing the teachers have been working with his Individualized Education Plan (IEP). B.B. is classified as having a specific learning disability and has needed some reading and test-taking accommodations. His grades have improved, he has a good group of friends as a support network with whom he has attended school for many years, and intends to proceed to college.

In January 2019, petitioners faced a hardship that required them to move from their home. They relocated to a residence inn for almost nine months, which further

stressed their financial situation, so that B.B. could remain in his school. They then moved to an apartment, but it was on the other side of Wayne. They tried very hard to find an apartment within the same “attendance zone” as their house had been located but having a dog made finding such difficult, if not impossible. As a result, B.B. was technically within the attendance zone for Wayne Hills instead of Wayne Valley, but he was refusing to attend and was showing signs of anxiety. Prior to the start of the 2019-2020 school year, petitioners requested the Board to allow B.B. to remain for his eighth-grade year at the Wayne Valley middle school. [J-3.] The Board approved this request so that B.B. could complete middle school where he had always attended. [J-4.]

As was true for most students, B.B. began to engage in remote learning once the Covid pandemic emergency spread over New Jersey. Learning then was conducted under the hybrid model. In the spring of 2020, petitioners anticipated their son’s entry into high school in the fall and extended their request that he be permitted to remain with his friends from his former neighborhood and attendance zone. [J-5.] At that time, their request was denied (J-6), on the basis of the Board’s Policy #5120. At the same time that petitioners continued to argue in favor of an exception being made for B.B., as they viewed many others having been afforded that right, they also made the difficult decision to split up the household. D.B. had a girlfriend who offered her and B.B. a place to stay within the Wayne Valley attendance zone, while W.B. and their dog remained in the apartment they had all moved into earlier in the year. Petitioners also testified that it had been suggested that they take B.B. to a psychiatrist to assist him with the difficult adjustment, but they did not do so.

On cross examination, petitioners acknowledged that D.B. and B.B. will stay living and sharing expenses with her girlfriend if that is what is required so that B.B. can attend the high school he prefers. They also acknowledged that his IEP could be implemented at either high school and that he does not require special services only available at Wayne Valley. W.B. wanted the record to reflect his disappointment that the Superintendent, Dr. Toback with whom he had had a personal conversation and who promised that he would personally follow-up, never did return those communications.

Donna Reichman testified on behalf of the Board. She has been an employee with the Wayne district for seventeen years as a teacher, principal, and now Assistant Superintendent. Reichman reviewed the history of the petitioners' requests and the Board's responses, that were largely delegated to her, especially after Covid when everyone was overwhelmed with the "new normal" and an excessive number of personal requests by staff and pupils. She further stated that petitioners' request in May 2020 contained the argument that B.B. had always looked forward to playing football for Wayne Valley High School, which by state athletic standards, could not be taken into consideration.

With respect to other reasons provided by petitioners, Reichman explained that Policy #5120 supported the Board's decision to grant the request for eighth grade because it prevents disruption in one's last year before a graduation and also supported the denial for B.B.'s freshman year of high school. Policy #5120 specifically, and in pertinent part, states:

Pupils shall generally attend the school located in the attendance area of their residence. The Superintendent may assign a pupil to a school other than that designated by the attendance area when such an exception is justified by circumstances and/or is in the best interests of the pupil.

Reichman focused on the fact that either high school within Wayne could implement B.B.'s IEP and that it was clear that he could succeed at either. She also noted that the middle school he attended was the only one in the district to have a mix of kids from the two high school attendance zones such that some of his friends might also be heading to Wayne Hills.

When questioned about the frequency with which the Board has granted exceptions under Policy #5120, Reichman stated that out of a student population of over 2400, there had been approximately three who were granted it because they were in their final year and three who were granted it because of IEP implementation issues. On cross-examination, she estimated that forty students make these requests a year.

The policy is applied mostly to pupils who are medically fragile or severely disabled. With respect to relocations, she agreed that no one wants to see a student go to two different schools within two months. Reichman also assured petitioners that if new information became available, such as a current psychiatric evaluation, that it would be considered.

### **ANALYSIS AND CONCLUSIONS OF LAW**

The issue in this matter is whether B.B. was entitled to attend Wayne Valley High School, notwithstanding that his parents moved out of that attendance zone but remained within the Township.

Generally speaking, domicile is the place of a person's abode where he or she has the present intention of remaining and to which, if absent, he or she intends to return. Mercadante v. City of Paterson, 111 N.J. Super. 35, 39 (Ch. Div. 1970), aff'd, 58 N.J. 112 (1971). A person may have multiple residences, but only one domicile at a time; as such, the residence may coincide with domicile, but does not alone determine domicile. State v. Benny, 20 N.J. 238, 251 (1955). The question of domicile is one of fact and must be determined on a case-by-case basis. Lea v. Lea, 18 N.J. 1, 7 (1955).

In the present matter, there is evidence that petitioners established themselves in the Wayne Hills attendance zone prior to B.B.'s last year in middle school and before the commencement of high school. Thereafter, the petitioners purposely separated, not for marital reasons, but in order to re-establish B.B. in the Wayne Valley attendance zone, with D.B. and B.B. moving in with a friend. They seek a determination herein that the Board should exercise its discretion under its Policy #5120 to allow B.B. to attend Wayne Valley even if they reunite the family at the current residence of W.B. outside that zone.

As set forth above, Policy #5120 states:

Pupils shall generally attend the school located in the attendance area of their residence. The Superintendent may assign a pupil to a school other than that designated by the attendance area when such an exception is justified by circumstances and/or is in the best interests of the pupil.  
[J-2.]

Based on the preponderance of the credible facts, I **CONCLUDE** that B.B. is residing in the attendance zone of Wayne Valley High School only so long as he and a parent reside in that zone. I further **CONCLUDE** that the Board has properly applied its Policy #5120 and did so herein in a fair, reasonable, and nonarbitrary manner. The evidence clearly demonstrates that the Board has applied Policy #5120 in an even-handed manner in general and specifically for B.B. In his last year of middle school, B.B. was permitted to finish school in the Wayne Valley attendance zone, as it typically did for pupils in their last year at a school. The Board also carefully considered whether attendance at Wayne Valley High School was required in the best interests of the pupil and determined that B.B. could obtain all the services he needs at either high school, and at either, he would be entering his first year and was likely to succeed.

I **CONCLUDE** that the Board was correct in deciding that petitioners' circumstances do not come within the school assignment policy exceptions. If the family chooses to reside as an entire family unit in the current apartment of W.B., B.B. will be required to attend Wayne Hills High School. I recognize that economic or other hardships which befall parents often have unintended consequences for their child(ren). Nevertheless, these events happen in life and we all have to adjust within the system that governs all similarly situated pupils.

### **ORDER**

Based upon the foregoing, it is **ORDERED** that the petition of appeal of W.B. and D.B. on behalf of B.B. should be and is hereby **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. of any exceptions must be sent to the judge and to the other parties.



February 18, 2021

DATE

GAIL M. COOKSON, ALJ

Date Received at Agency:

2/18/21

Date Mailed to Parties:

2/18/21

id

**APPENDIX**

**WITNESSES**

For Petitioner:

W.B.

D.B.

For Respondent:

Donna Reichman

**LIST OF EXHIBITS IN EVIDENCE**

Joint Exhibits:

- J-1 B.B. Individualized Education Plan, dated February 4, 2020
- J-2 Wayne Township Board of Education District Policy #5120
- J-3 Letter to Donna Reichman from petitioners, dated August 31, 2019
- J-4 Letter to petitioners from Donna Reichman, dated September 4, 2019
- J-5 Letter to Dr. Mark Toback from petitioners, dated February 20, 2020
- J-6 Letter to petitioners from Donna Reichman, dated February 25, 2020
- J-7 Letter to Dr. Mark Toback from petitioners, dated May 1, 2020
- J-8 Letter to petitioners from Donna Reichman, dated May 11, 2020
- J-9 Residency documents of petitioners
- J-10 Email exchanges between petitioners and Board, various dates

For Petitioner:

None.

For Respondent:

None.