

New Jersey Commissioner of Education

Final Decision

D.D., on behalf of minor children, A.D., J.D., K.D., J.D.,
and K.D.,

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 his five minor children were not domiciled within the Borough of Magnolia from November 11, 2023 forward and are therefore not entitled to a free public education in the Magnolia School District for the 2023-2024 school year. In his appeal, petitioner admitted that the family is now living in Gloucester City due to unforeseen problems with their residence in Magnolia but requested that his children be granted an exception to the residency requirement to allow them to complete the school year in Magnolia. The Board filed a motion for summary decision and requested tuition reimbursement for the period of the children’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; petitioner’s family, including minor children A.D., J.D., K.D., J.D., and K.D., were domiciled within the Borough of Magnolia and attended school within the District at the beginning of the 2023-2024 school year; however, prior to November 11, 2023, the District became aware that petitioner’s family had moved from their Magnolia residence; and petitioner admitted that his family now resides in Gloucester City. Accordingly, the ALJ concluded that respondent is entitled to summary decision, and ordered that the matter be remanded to the Board for a determination of the total amount of tuition due for the time period when A.D., J.D., K.D., J.D., and K.D. resided outside of the Magnolia school district during the 2023-2024 school.

Upon review, the Commissioner concurred with the ALJ’s finding that petitioner and his children have not resided in Magnolia since at least November 11, 2023, and found that petitioner has not met his burden of proving that he is domiciled within the Magnolia school district; pursuant to *N.J.A.C. 6A:22-6.2(a)* and *N.J.S.A. 18A:38-1(b)*, the Commissioner may assess tuition for the period of ineligible attendance; in this case, however, the record did not provide sufficient information to accurately determine the amount of tuition owed by petitioner. Accordingly, the Board’s motion for summary decision was granted; petitioner’s residency appeal was dismissed; and the matter was remanded to the Office of Administrative Law for further proceedings to develop the factual record so that the tuition amount owed to the Board may be properly calculated, as required by *N.J.S.A. 18A:38-1b*.

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.

203-24R

OAL Dkt. No. EDU 01560-24
Agency Dkt. No. 18-1/24

New Jersey Commissioner of Education
Final Decision

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K.D., J.D., and K.D.,

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 and considered. The parties did not file exceptions.

This matter concerns respondent Board of Education's December 20, 2023, determination that D.D. and his children no longer reside in the Borough of Magnolia and its demand for payment of tuition for the period of the children's ineligible attendance at school in the district. Petitioner appealed the Board's residency determination to the Commissioner. The Board filed an answer and counterclaim seeking payment of tuition, and the matter was transmitted to the OAL for further proceedings. Thereafter, the Board moved for summary decision.

The Administrative Law Judge (ALJ) found that petitioner and his children have not been

domiciled within the district since at least November 11, 2023. Accordingly, the ALJ granted the Board's motion for summary decision and concluded that the Board was entitled to tuition reimbursement from petitioner. Because the record lacked information regarding the number of days of the children's ineligible attendance, the ALJ recommended that the matter be remanded to the Board for a determination of the total amount of tuition due.

"N.J.S.A. 18A:38-1(a) mandates that public schools are free to any person, [over age five and] under twenty years of age, 'who is domiciled within the school district.'" *K.K-M., on behalf of A.W. v. Bd. of Educ. of City of Gloucester City*, 463 N.J. Super. 24, 31 (App. Div. 2020). A child's parents "'shall have the burden of proof by a preponderance of the evidence' to prove domicile in the school district." *D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist.*, 366 N.J. Super. 269, 273 (App. Div. 2004) (quoting N.J.S.A. 18A:38-1(b)(2)). Upon review, the Commissioner finds that petitioner has not satisfied his burden of proving that he is domiciled in the district. The record supports the ALJ's finding that petitioner and his children have not resided in Magnolia since at least November 11, 2023.

Pursuant to N.J.A.C. 6A:22-6.2(a), if "petitioner does not sustain the burden of demonstrating the student's right to attend the school district, . . . the Commissioner may assess tuition for the period during which the hearing and decision on appeal were pending, and for up to one year of a student's ineligible attendance in a school district prior to the appeal's filing and including the 21-day period to file an appeal." N.J.S.A. 18A:38-1(b) provides that the Commissioner may order tuition "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." Because the record lacks information regarding each child's period of ineligible attendance, the Commissioner

is unable to assess tuition against petitioner at this time.

Accordingly, the Board's motion for summary decision is granted, and petitioner's residency appeal is hereby dismissed. The matter is remanded to the OAL for further proceedings to develop the factual record regarding the number of days of each child's period of ineligible attendance so that the tuition amount owed to the Board may be calculated.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2024

Date of Mailing: May 28, 2024

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

SUMMARY DECISION

OAL DKT. NO. EDU 01560-2024

AGENCY DKT. NO. 18-1/24

**D.D. ON BEHALF OF MINOR CHILDREN,
A.D., J.D., K.D., J.D. AND K.D.,**

Petitioner,

v.

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

Respondent.

D.D., on behalf of minor children, A.D., J.D., K.D., J.D., and K.D., petitioner, pro se

William C. Morlock, Esq., for respondent (Gorman, D'Anella & Morlock, attorneys)

Record Closed: April 15, 2024

Decided: April 18, 2024

BEFORE **REBECCA C. LAFFERTY**, ALJ:

STATEMENT OF THE CASE

Petitioner, D.D. (petitioner or D.D.), the father of minor children, A.D., J.D., K.D., J.D., and K.D., appeals the December 19, 2023 determination by the respondent, Board of Education of the Borough of Magnolia, Camden County (respondent or Board), that A.D., J.D., K.D., J.D., and K.D. were not domiciled within the Borough of Magnolia School

District (District) and that tuition reimbursement is required. The respondent alleges that the minor children A.D., J.D., K.D., J.D., and K.D., were not residing at the address provided by the petitioner within the District and seeks repayment of tuition. At issue is whether A.D., J.D., K.D., J.D., and K.D. were entitled to be enrolled in the District for purposes of receiving a thorough and efficient public education free of charge for the 2023-2024 school year, pursuant to N.J.S.A. 18A:38-1.

PROCEDURAL HISTORY

By letter, dated December 20, 2023, the respondent notified petitioner that A.D., J.D., K.D., J.D., and K.D. were ineligible to continue to attend school within the District as they were no longer domiciled in the District. The petitioner filed a Pro Se Residency Appeal on or about January 24, 2024. The respondent filed an Answer and Cross Petition for tuition on February 1, 2024. 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 1, 2024, 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 on March 6, 2024, an email was sent to the parties confirming the briefing schedule for a motion for summary decision. The respondent filed a motion for summary decision on March 13, 2024. Petitioner's opposition to the summary decision motion was due on April 1, 2024, but no opposition was received by the OAL on that date. A follow-up email was sent to the parties on April 2, 2024, and a status conference was held on April 8, 2024, at which time petitioner advised that he wished to submit a response to the respondent's summary decision motion. On April 15, 2024, petitioner submitted an email in opposition to the summary decision motion, and on that same date, counsel for the respondent notified this Tribunal that the respondent would not be filing a reply brief.

FACTUAL DISCUSSIONS AND FINDINGS

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

Petitioner's family including A.D., J.D., K.D., J.D., and K.D. were residents of and domiciled within the Borough of Magnolia (Borough) and were attending school within the District at the beginning of the 2023-2024 school year. Prior to November 11, 2023, it came to the attention of the District's administration, that petitioner's family moved from their residence in the Borough. (See Certification of Paul Sorrentino, Principal.) On November 16, 2023, the District sent correspondence to the family addressing the residency issue and requesting that the family confirm their residency status as soon as possible. (See Exhibit B to the Certification of Paul Sorrentino, Principal.) After receiving the request for residency confirmation, Mrs. D. advised the District that the family was living with L.R. within the District. (See Certification of Paul Sorrentino, Principal.) Thereafter, the school principal, Paul Sorrentino, conducted surveillance on three separate occasions and did not observe any of D.D.'s family members at L.R.'s residence at any point in time. (See Certification of Paul Sorrentino, Principal.)

On December 6, 2023, the District sent the family correspondence stating that the school administration was aware that the family was no longer domiciled within the Borough, and the Board would be discussing the issue and voting on removing the children from the school and seeking tuition reimbursement of \$95,000 at the December 19, 2023 Board meeting. (See Exhibit C to the Certification of Paul Sorrentino, Principal.)

During the executive session of the December 19, 2023 Board meeting, D.D. admitted that the family was living in Gloucester City where the family had a lease for a residence, which he later disclosed was located at xxx Powell Street, Gloucester City, New Jersey. (See Pro Se Residency Appeal, petitioner's email of April 15, 2024, and the Certification of Paul Sorrentino, Principal.) On December 19, 2023, based on the information presented, including the information provided by D.D. at the Board meeting, the Board unanimously voted to disenroll A.D., J.D., K.D., J.D., and K.D. from the District

because the family was no longer domiciled within the District. (See Exhibit D to the Certification of Paul Sorrentino, Principal.) On December 20, 2023, the Board notified D.D. that A.D., J.D., K.D., J.D., and K.D. were ineligible to continue to attend school within the District as they were no longer domiciled in the District. (See Exhibit E to the Certification of Paul Sorrentino, Principal.)

Additionally, I **FIND** as fact that A.D., J.D., K.D., J.D., and K.D. have not been domiciled within the District since at least November 11, 2023.

I further **FIND** as fact that the daily per pupil tuition rate for the District for the 2023-2024 school year is \$104.39, which equates to a combined daily rate of \$521.95 for all five children. (See attached Certification of Paul Sorrentino, Principal.)

LEGAL ANALYSIS AND CONCLUSIONS

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. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). 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.” Id. (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 A.D., J.D., K.D., J.D., and K.D. had been domiciled in the District during the 2023–2024 school year.

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). N.J.A.C. 6A:22-3.1(a)(1) provides: “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.” See also 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). When a child is found to be ineligible to attend a school in its district, a school board is entitled to recover tuition from the parent or guardian of the child found ineligible to attend within the district. N.J.S.A. 18A:38-1(b)(2).

A review of the record and undisputed facts reveals that A.D., J.D., K.D., J.D., and K.D. have not been domiciled within the District while attending school there since at least November 11, 2023. Petitioner advised the Board at the December Board meeting that his family had been residing in Gloucester City due to unforeseen circumstances causing them to leave their residence in the Borough. Petitioner argues in his opposition to this motion that he understands that his children are not permitted to attend District schools if they no longer reside in the District, but he seeks an exception to allow them to finish the school year in the District. Thus, it is clear that petitioner’s family is now domiciled outside of the District in Gloucester City, this fact having been confirmed by the petitioner. Accordingly, I **CONCLUDE** that the respondent is entitled to summary decision that A.D., J.D., K.D., J.D., and K.D. were not entitled to attend school in the District and receive a

free public education there pursuant to N.J.S.A. 18A:38-1(a) since at least November 11, 2023.

I further **CONCLUDE** that because A.D., J.D., K.D., J.D., and K.D. were not entitled to receive a free public education in the District since at least November 11, 2023, the respondent is entitled to tuition reimbursement from petitioner. The daily per pupil tuition rate for the District for the 2023-2024 school year is \$104.39, which equates to a combined daily rate of \$521.95 for all five children. Therefore, I **CONCLUDE** that respondent is entitled to summary decision on its Cross Petition for tuition reimbursement from petitioner for the cost of providing an education to A.D., J.D., K.D., J.D., and K.D. at the daily per pupil tuition rate for the 2023-2024 school year of \$104.39, which equates to a combined daily rate of \$521.95, beginning from the date that it is determined that the family began residing outside of the District until the date that A.D., J.D., K.D., J.D., and K.D. are disenrolled in the District.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED** and petitioner's appeal is hereby **DISMISSED**.

It is further **ORDERED** that the matter be remanded to respondent for a determination of the total amount of tuition due for the time period in question when A.D., J.D., K.D., J.D., and K.D. resided outside of the Magnolia Township school district during the 2023-2024 school.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.



April 18, 2024 _____

DATE

REBECCA C. LAFFERTY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

RCL/tat

APPENDIX

EXHIBITS

For petitioner

Email opposing respondent's motion for summary decision, dated April 15, 2024

For respondent

Notice of Motion for Summary Decision; Respondent's Statement of Material Facts in Support of Motion for Summary Decision; Respondent's Brief in Support of Motion for Summary Decision; and Certification of Paul Sorrentino on Behalf of Respondent/Cross-Petitioner with attached Exhibits A – E

Correspondence from respondent's counsel, dated April 15, 2024