

New Jersey Commissioner of Education

Final Decision

A.T., on behalf of minor child, L.B.,

Petitioner,

v.

Board of Education of the City of Burlington,
Burlington County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that her minor grandchild, L.B., was not entitled to a free public education in the Burlington School District. L.B. had been attending school in Edgewater Park, where she is domiciled with her mother. However, on September 7, 2023, the family sought to enroll L.B. in the Burlington School District based on an application for admission as an affidavit student; in the application, petitioner stated in the “Explanation of Hardship” section that L.B. had been experiencing bullying at her school in Edgewater Park and the family wanted her to attend school in Burlington for her safety. The Board rejected the petitioner’s application, determining that “family economic hardship was not demonstrated” as required under *N.J.S.A. 18A:38-1*; the Board subsequently filed a motion for summary decision and sought tuition reimbursement for the period of L.B.’s ineligible attendance in Burlington Schools at a daily rate of \$180.16.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; pursuant to *N.J.S.A. 18A:38-1(a)*, public school is free to a minor who is domiciled within the school district; New Jersey has consistently held that the domicile of the child follows the domicile of the parent; pursuant to *N.J.A.C. 6A:22-6.2*, the Commissioner may assess tuition when a child does not have a right to attend the school district; petitioner bears the burden of proof in a determination of residency ineligibility; here, petitioner failed to appear at the pre-hearing conference scheduled in this matter, and failed to respond to the motion for summary decision. The ALJ concluded that petitioner failed to sustain her burden of establishing that her grandchild, L.B., was entitled to attend school in Burlington as an “affidavit student” pursuant to *N.J.S.A. 18A:38-1*; therefore, L.B. was not entitled to a free public education in Burlington schools during the 2023-2024 school year. Accordingly, the ALJ granted summary decision to the Board, dismissed the petition, and ordered petitioner to pay the Board tuition at the rate of \$180.16/day for each day of L.B.’s ineligible attendance in Burlington schools.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions but noted that the record lacks the detail necessary to calculate the tuition owed to the Board. Accordingly, the matter was remanded to the OAL for further proceedings to develop the record regarding the number of days of L.B.’s ineligible attendance so that the tuition amount owed to the Board may be calculated.

<p>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.</p>

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v.

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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.

Upon review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain her burden of establishing that her grandchild, L.B., was entitled to attend school in Burlington as an "affidavit student" pursuant to *N.J.S.A. 18A:38-1*. The Commissioner further concurs with the ALJ's conclusion that L.B. was, therefore, not entitled to a free public education in the district 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. 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:38-1b*. The ALJ found that the tuition rate is \$180.16 per day, based on the certification of the district's Superintendent,

and the Commissioner concurs with this finding. However, the record lacks information regarding the number of days of ineligible attendance, such that the Commissioner is unable to assess tuition against petitioner at this time.

Accordingly, the respondent's motion for summary decision is granted, and petitioner's residency appeal is hereby dismissed. This matter is remanded to the OAL for further proceedings to develop the factual record regarding the number of days of L.B.'s 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: June 10, 2024
Date of Mailing: June 12, 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 12774-23

AGENCY DKT. NO. 288-10/23

A.T. ON BEHALF OF MINOR CHILD L.B.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
BURLINGTON, BURLINGTON COUNTY,**

Respondent.

A.T., petitioner, pro se

Alicia D'Anella, Esq., for respondent (Parker McCay, P.A, attorneys)

Record Closed: March 27, 2024

Decided: May 8, 2024

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

A.T on behalf of minor child L.B. challenges the residency determination by respondent, the Board of Education of the City of Burlington (Board). Under N.J.S.A. 18A:38-1(a), public schools shall be free to a minor who is domiciled within the school

district. The Board filed a motion for summary decision. The Board also seeks reimbursement for the period of ineligibility that L.B. attended school in the district.

PROCEDURAL HISTORY

On September 28, 2023, the respondent notified petitioner A.T. that L.B. was not entitled to a free education in the City of Burlington Public School District (District) because “family hardship” was not demonstrated. On October 18, 2023, A.T. appealed the District’s decision. On November 13, 2023, the respondent filed an answer and a notice of motion for summary decision.

On November 16, 2023, the Department of Education, Office of Controversies and Disputes, transmitted the case to the Office of Administrative Law as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing.

On December 5, 2023, I was assigned this case for a hearing. On January 9, 2024, the matter was scheduled for a pre-hearing conference. The petitioner failed to appear. The matter was rescheduled to January 29, 2024. At that time a status conference was held and a motion schedule was set for the response to respondent’s motion. The petitioner had until February 29, 2024, to respond, and respondent’s reply was due on March 7, 2024. There was no response from the petitioner. On March 27, 2024, an email was sent regarding the responses that were due. Again, no response was received from the petitioner. The record closed on March 27, 2024.

FINDINGS OF FACT

Based on the documents submitted in support of the motion for summary decision and the due-process petition, I **FIND** the following as **FACT**:

1. Petitioner, A.T., is the grandmother of L.B. and is domiciled in the city of Burlington, New Jersey. (Affidavit Student, Part 1—Sworn Statement of Resident.)

2. John Russell is the superintendent of the City of Burlington Public School District. (Russell Certif. paragraph 1.)
3. On September 7, 2023, L.B.'s family sought to enroll her in the District as an "affidavit student." (Russell Certif. paragraph 2.)
4. A completed affidavit was received from L.B.'s family on September 25, 2023, and was provided to the vice principal, Nick Rancani. (Russell Certif. paragraph 4.)
5. A.M. is the mother of L.B. She lives in Edgewater Park, New Jersey. (See Affidavit of Student, Part 2—Application for Admission.) In A.M.'s affidavit, under the section titled "Explanation of Hardship," she wrote the following: "At her other school she was being bullied by a male student and [L.B.] didn't want to attend back and all family member[s] didn't want her to go back to that school do [sic] to her safety." Ibid.
6. On September 28, 2023, A.T. was notified by Vice Principal Rancani that L.B. was not entitled to a free education in the City of Burlington Public School District because "family economic hardship was not demonstrated." (District Letter.) The District determined that the petitioner's explanation of hardship did not meet the definition under N.J.S.A. 18:A:38-1. (Russell Certif. paragraph 7.)
7. The District's tuition rate for students in L.B.'s age range is \$180.16 per day for an annual rate of \$19,468. (Russell Certif. paragraph 10.)
8. The petitioner appealed the decision on October 18, 2023. (Pro Se Residency Appeal.)
9. The petitioner failed to respond to the motion for summary decision.

CONCLUSIONS OF LAW

A party may move for summary decision upon any or all of the substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. “The decision sought may be rendered 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).

In this case, no genuine issue of any material fact exists, and the Board is entitled to prevail as a matter of law for the reasons stated below.

Public school shall be free to a minor who is domiciled within the school district, N.J.S.A. 18A:38-1(a); New Jersey has consistently held that the domicile of the child follows the domicile of the parent, Shim v. Rutgers, 191 N.J. 374, 399 (2007); and if a student does not have a right to attend the school district, the commissioner of the Department of Education may assess tuition, N.J.A.C. 6A:22-6.2. Petitioner has the burden of proof in a determination of residency ineligibility. N.J.S.A. 18A:38-1.

In this case, L.B. is domiciled in Edgewater, NJ, with her mother, A.M. Because of “bullying” she was experiencing at the school in Edgewater the family sought to enroll L.B. in the District as an “affidavit student.” As part of the “Application for Admission,” completed by the legal parent, there is an “explanation of hardship” requirement that the parent/guardian must complete.

N.J.S.A. 18A:38-1 provides, in pertinent part:

Any person who is kept in the home of another person domiciled within the school district and is supported by such other person gratis as if he were such other person’s own child, upon filing by such other person with the secretary of the board of education of the district, if so required by the board, a sworn statement that he is domiciled within the district and is supporting the child gratis and will assume all personal obligations for the child relative to school

requirements and that he intends so to keep and support the child gratuitously for a longer time than merely through the school term, and a copy of his lease if a tenant, or a sworn statement by his landlord acknowledging his tenancy if residing as a tenant without a written lease, and upon filing by the child's parent or guardian with the secretary of the board of education a sworn statement that he is not capable of supporting or providing care for the child due to a family or economic hardship and that the child is not residing with the resident of the district solely for the purpose of receiving a free public education within the district. The statement shall be accompanied by documentation to support the validity of the sworn statements, information from or about which shall be supplied only to the board and only to the extent that it directly pertains to the support or nonsupport of the child. If in the judgment of the board of education the evidence does not support the validity of the claim by the resident, the board may deny admission to the child.

Here, L.B.'s mother's explanation of hardship was, "[a]t her other school she was being bullied by a male student and [L.B.] didn't want to attend back and all family member[s] didn't want her to go back to that school do [sic] to her safety." See Affidavit of Student, Part 2—Application for Admission. This, the respondent argues, does not fit within the hardship criteria to be accepted as a student in the District. I agree. I **CONCLUDE** that there was no sworn statement that A.M. is not capable of supporting or providing care for L.B. due to a family or economic hardship pursuant to N.J.S.A. 18A:38-1. I further **CONCLUDE** that L.B. is residing with the resident of the District solely for the purpose of receiving a free public education.

Accordingly, I **CONCLUDE** that A.T. owes the respondent \$180.16 per day for the period of ineligibility that L.B. attended the City of Burlington public schools pursuant to N.J.S.A. 18A:38-1(b)(1) and N.J.A.C. 6A:22-6.2.

ORDER

It is **ORDERED** that the petition is **DENIED** based upon petitioner's failure to meet her burden of proof that the District acted arbitrarily or capriciously in disputing L.B.'s entitlement to a free education in the City of Burlington Public School District.

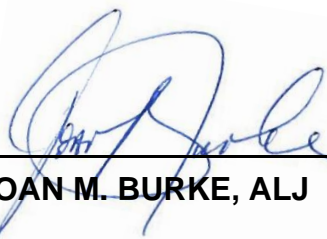
It is further **ORDERED** that the Board of Education of the City of Burlington is entitled to tuition reimbursement from petitioner in an amount based on the per-diem rate of \$180.16 for each day L.B. attended while ineligible.

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.

May 8, 2024
DATE


JOAN M. BURKE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

EXHIBITS

For Petitioner:

Pro Se Residency Appeal

For Respondent:

Respondent's Answer, Motion for Summary Decision, Brief with Certification of John Russell, Superintendent, City of Burlington Public Schools, with supporting documents