

New Jersey Commissioner of Education
Final Decision

I.D., on behalf of minor child, I.R.,

Petitioner,

v.

Board of Education of the City of Burlington,
Burlington 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.

Upon review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain her burden of establishing that minor child I.R. was entitled to attend school in Burlington pursuant to *N.J.S.A. 18A:38-1*. The Commissioner further concurs with the ALJ's conclusion that I.R. was, therefore, not entitled to a free public education in the district during that time.

Accordingly, the Initial Decision is adopted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 18, 2024
Date of Mailing: July 24, 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 01364-24

AGENCY DKT. NO. 364-12/24

I.D. ON BEHALF OF MINOR CHILD I.R.,

Petitioners,

v.

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

Respondent.

I.D., appearing pro se

Alicia D’Anella, Esq., for respondent (Gorman, D’Anella & Morlok, LLC, attorneys)

Record Closed: May 3, 2024

Decided: June 14, 2024

BEFORE **WILLIAM T. COOPER III**, ALJ:

STATEMENT OF THE CASE

Petitioner I.D. (“petitioner”) filed an appeal with the Department of Education from the determination of the Board of Education of the City of Burlington (“Board”) that her niece, I.R., was only residing with I.D. for purposes of attending school, and petitioner failed to

demonstrate economic or family hardship and/or that I.R.'s parents C.A. and A.A. were incapable of supporting her, as required by N.J.S.A. 18A:38-1.

PROCEDURAL HISTORY

On December 4, 2023, the Board issued a final Notice of Ineligibility to I.D. stating that her niece I.R. was ineligible to attend school within the district. The petitioner filed a notice of appeal on or about December 21, 2023. The Board filed an answer and motion for summary decision and requested that the Commissioner dismiss the appeal and assess petitioner the cost of tuition.

The matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case on January 26, 2024. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A status conference was conducted on March 14, 2024, and the petitioner was afforded an opportunity to provide a response to the motion for summary decision by April 12, 2024. No response or opposition to the motion was received from the petitioner.

A hearing on the motion was scheduled for May 3, 2024. The petitioner failed to appear at the hearing. All notices for the hearing were served properly by the Office of Administrative Law (OAL). No mailings were returned or unsuccessfully delivered. The OAL did not receive any contact from the petitioner while this matter was pending.

FACTUAL DISCUSSION

The material facts were uncontroverted, and I **FIND** as **FACT** the following:

I.R. previously attended Burlington City High School through the end of the 2022–2023 school year, which was her junior (eleventh-grade) year. I.R.'s parents, C.A. and A.A., moved out of the City of Burlington Public School District ("district") during the 2022–2023 school year, after purchasing a home in Marlton, New Jersey. As a result, I.R. was transferred to Cherokee High School for the 2023–2024 school year. Prior to her transfer,

I.R.'s parents requested permission for her to remain in the district through the 2023–2024 school year. This request was denied.

Families are allowed to enroll students in the district due to economic or family hardship pursuant to N.J.S.A. 18A:38-1, and on or about November 28, 2023, I.D., who is I.R.'s aunt and resides within the district, sought to enroll her niece I.R. in the district under the provisions of that statute. An application for families seeking to enroll students in the district due to economic or family hardship was forwarded to I.D. The completed affidavits were submitted on or about December 1, 2023.

In the affidavits, under the section titled “Explanation of Hardship,” I.R.'s mother, C.A., provided the following explanation:

[I.R.] is having a hard time adapting to the new school. She's being depressed, doesn't leave the room, crying all day, claiming her life is ruined ever since we moved, as she doesn't want to graduate with students and teachers that she doesn't know and the students in the new school isn't being opened [sic] to include her.

On December 4, 2023, I.R.'s family was notified that I.R.'s enrollment had been denied and the family was provided with a Notice of Ineligibility and information on how petitioners may appeal to the Commissioner of Education. The district concluded that I.R. was only residing with I.D. for purposes of attending school, and petitioner failed to demonstrate economic or family hardship as required by N.J.S.A. 18A:38-1 and/or that I.R.'s parents were incapable of supporting her.

The daily tuition rate for a student in the district during the 2023–2024 school year is \$114.19 per day.

LEGAL ANALYSIS AND CONCLUSIONS

Summary Decision

At any time concurrent with or after the filing of an answer, but prior to transmittal of a matter to the Office of Administrative Law, any party may apply for summary decision by way of a motion with proof of service on each other party. N.J.A.C. 6A:3-1.12. A contested case can be summarily disposed of before a plenary hearing in instances where the undisputed material facts, as developed on motion or otherwise, indicate that a particular disposition is required as a matter of law. See In re Robros Recycling Corp., 226 N.J. Super. 343, 350 (App. Div. 1988). When a motion for summary decision is made and supported, to prevail, an adverse party must, by responding affidavit, set forth specific facts showing that there is a genuine issue that can only be determined in an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

Here, the petitioner was afforded an opportunity but failed to respond to the motion filed on or before April 12, 2024. Petitioner also failed to appear for the scheduled motion hearing on May 3, 2024.

I **CONCLUDE** that the material facts are undisputed and, as such, this matter is ripe for summary decision.

Issues

There are two issues here: 1. Did petitioner demonstrate economic or family hardship as required by N.J.S.A. 18A:38-1 and/or that I.R.'s parents were incapable of supporting her? 2. Was the determination by the Board that I.R. is not entitled to a free education in the City of Burlington Public School District arbitrary and capricious?

Analysis

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). The domicile of an unemancipated child is the domicile of the parent, custodian, or guardian. 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.

Here, I.R. previously attended Burlington City High School through the end of the 2022–2023 school year, which was her junior (eleventh-grade) year. I.R.’s parents, C.A. and A.A., moved out of the district during the 2022–2023 school year after purchasing a home in Marlton, New Jersey. The district concluded that I.R. was not entitled to a free education in the City of Burlington Public School District because petitioner was unable to demonstrate either an economic or family hardship or that C.A. and A.A. are unable to provide care and support to I.R. N.J.S.A. 18A:38-1 requires that the parent or guardian of a child file a sworn statement with the secretary of the board of education attesting that the parent or guardian 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. With respect to meeting the threshold for establishing hardship, N.J.S.A. 18A:38-1(b) requires that parents not only show a “hardship,” but also show that they are incapable of providing support or care to the child because of that hardship. As set forth below, neither hardship nor inability to care for I.R. has been demonstrated.

I.R.’s mother, C.A., submitted a sworn statement in support of I.R.’s enrollment as an “affidavit student” that demonstrates only that I.R. is unhappy at having to transfer to a new school due to her parents’ relocation. Specifically, C.A. attests that I.R. is “claiming her life is ruined” and “doesn’t want to graduate with students and teachers that she doesn’t know.” While I.R.’s unhappiness and disappointment are perfectly understandable, a student’s displeasure does not meet the legal threshold for family or economic hardship. Further, even if I.R.’s unhappiness constituted a hardship, the affidavit is lacking any information regarding C.A. and A.A.’s capability to provide care or support to I.R. The statute requires the parent to provide “a sworn statement that he is

not capable of supporting or providing care for the child due to a family or economic hardship,” not merely that a hardship may exist. N.J.S.A. 18A:38-1(b); see also J.B. ex rel. R.H. v. Bd. of Educ. of Ocean, SB# 26-97 (Sept. 3, 1997), <http://www.nj.gov/education/legal/sboe/1997/jb3.pdf>.

Applying the law to the facts and circumstances, I **CONCLUDE** that I.R. is not entitled to free public education in the respondent’s district. I **CONCLUDE** that the petitioners have failed to satisfy their burden of proof that C.A. and A.A. are incapable of providing care and support to I.R. or that the family is facing an economic hardship. I **CONCLUDE** that the respondent did not act in an arbitrary and capricious manner in denying enrollment to I.R. I **CONCLUDE** that summary decision in favor of respondent is appropriate.

ORDER

It is hereby **ORDERED** that respondent’s motion for summary decision is **GRANTED**. Petitioner’s appeal is **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.

June 14, 2024

DATE



WILLIAM T. COOPER III, ALJ.

Date Received at Agency:

Date E-Mailed to Parties:

WTC/am

APPENDIX

Witnesses

For Petitioners

None

For Respondent

None

Exhibits

For Petitioners

None

For Respondent

R-1 Motion for Summary Decision and supporting Affidavit