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OAL Dkt. No. EDU 08069-23

Agency Dkt. No. 191-7/23

New Jersey Commissioner of Education

Final Decision

T.C.R., on behalf of minor child, I.R.,

Petitioner,

v.

Board of Education of the Toms River Regional
School District, Ocean 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 (ALJ) that pursuant to *N.J.A.C. 6A:22-3.1(a)(1)(iv)*, respondent cannot be compelled to provide transportation, or the cost thereof, for I.R. between petitioner's out-of-district residence in Barnegat Township and the Toms River Regional School District. *See M.L.P. v. Bd. of Educ. of Twp. of Bloomfield, Essex Cnty.*, Commissioner Decision No. 498-08A at 10 (Dec. 29, 2008) ("[T]o the extent a child lives in one district but attends school in another pursuant to *N.J.A.C. 6A:22-3.1(a)*, the child's entitlement to transportation is expressly limited to transportation to the residence of the parent or guardian who is domiciled in [the] district[.]").

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

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 6, 2024
Date of Mailing: August 7, 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

OAL DKT. NO. EDU 08069-23

AGENCY DKT. NO. 191-7/23

T.C.R., ON BEHALF OF MINOR CHILD, I.R.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOMS RIVER REGIONAL SCHOOL DISTRICT,
OCEAN COUNTY,**

Respondent.

T.C.R., petitioner, pro se

William Burns, Esq., for respondent (Hartman Duff, attorneys)

Record Closed: June 3, 2024

Decided: July 9, 2024

BEFORE **DEIRDRE HARTMAN-ZOHLMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner, T.C.R., seeks payment of transportation costs on behalf of her minor child, I.R. The issue presented is whether the respondent, the Board of Education of the Toms River Regional School District (Board), bears any obligation to provide

transportation, or the cost thereof, to I.R. from her mother's home in Barnegat Township. I find that, pursuant to N.J.A.C. 6A:22-3.1, the respondent does not have any obligation to transport I.R. from outside of the school district.¹

PROCEDURAL HISTORY

On July 6, 2023, petitioner filed a pro se residency appeal ("appeal") seeking to require the Board to transport I.R. from Toms River schools to Barnegat Township and to pay for such transportation retroactive to 2016.

On August 23, 2023, the Department of Education, Office of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL), where it was filed as a contested case pursuant to N.J.S.A. 52:14F-1 to -13 and N.J.S.A. 52:14B-1 to -15. In lieu of filing an answer to the petition, the Board filed a motion to dismiss. Status conferences were held in this matter on December 19, 2023, February 27, 2024, and March 20, 2024. On April 16, 2024, petitioner filed a response in opposition to respondent's motion. On June 3, 2024, respondent submitted a reply to petitioner's opposition. The record was closed on June 3, 2024.

FACTUAL FINDINGS

I **FIND** the following **FACTS** to be uncontested:

1. T.C.R. and her former husband, R.R., are the parents of I.R. (R-B.)
2. T.C.R. and R.R. are parties to a Final Judgment of Divorce and Property Settlement Agreement ("Agreement") dated May 16, 2016. (R-B.)
3. The Agreement states in pertinent part:

¹ As of February 2024, I.R. resides in District with R.R. during school, and thus the issue of transportation to and from Barnegat is moot as of such date.

It is anticipated Wife will be relocating from the marital residence. She shall be permitted to relocate with the children within a 30 minute driving distance from the marital home. . . . Pending the agreement of the parties as to which school district shall be utilized, the children shall continue to be enrolled in the Toms River School District. . . . Neither party may modify the school enrollment of the children without the other parent's consent or a court order.

[R-B, Final Judgment of Divorce at 10.]

4. On July 6, 2023, T.C.R. filed this appeal. (R-A.)
5. T.C.R. has resided in Barnegat since 2016. (R-A.)
6. R.R. has resided in Toms River Township since at least 2016. (R-B.)
7. I.R. has attended school in the Toms River School District since at least 2016. (R-A.)
8. T.C.R. and R.R. have joint legal custody of I.R. and share parenting time. (R-B.)
9. Toms River School District has at all relevant times provided transportation for I.R. to and from school and R.R.'s residence in Toms River.
10. Toms River School District has never provided transportation for I.R. outside of the District, nor has it provided any funding for transportation costs outside of the District for I.R. (R-A.)
11. A consent order in the Superior Court matrimonial case between I.R.'s parents, dated December 20, 2016, states that the District shall provide

busing for I.R. from the District to Barnegat. The only parties to this action were I.R.'s parents. The District was not a party to the matter. (A-A.)

LEGAL DISCUSSION

“Specific pleading requirements are governed by the agency with subject matter jurisdiction over the case.” N.J.A.C. 1:1-6.1(a). The rules require that a “petition shall include . . . a statement of the specific allegation(s) and essential facts supporting the specific allegation(s) that have given rise to a dispute pursuant to the school laws.” N.J.A.C. 6A:3-1.4(a). When deficient and inadequate petitions are presented to the Commissioner, at any time prior to transmittal of the pleadings to the OAL—in the Commissioner’s discretion or upon motion to dismiss filed in lieu of answer—the Commissioner may dismiss the petition on the grounds that the petitioner has not advanced any cause of action, even if the petitioner’s factual allegations are accepted as true. See N.J.A.C. 6A:3-1.10. Thus, the principles that govern a motion to dismiss for failure to state a claim under R. 4:6-2(e) apply equally to a motion to dismiss for failure to advance a cause of action under N.J.A.C. 6A:3-1.10.

In deciding a motion to dismiss for failure to state a claim upon which relief can be granted under R. 4:6-2(e), “the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim.” Rieder v. State, Dep’t of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (citation omitted). The court may not consider anything beyond whether the complaint states a cognizable cause of action. Ibid. For purposes of determining the motion, the court must “assume the facts as asserted by [petitioners] are true and give [them] the benefit of all inferences that may be drawn in [their] favor.” Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). If the factual allegations are “palpably insufficient to support a claim upon which relief can be granted,” the court must dismiss the complaint. Rieder, 221 N.J. Super. at 552.

The New Jersey Administrative Code delineates how enrollment in school districts is determined. Specifically, N.J.A.C. 6A:22-3.1 provides:

(a) A student is eligible to attend a school district if he or she is domiciled within the school district.

1. 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.

i. When a student's parents or guardians are domiciled within different school districts and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year. This subparagraph shall apply regardless of which parent has legal custody.

[N.J.A.C. 6A:22-3.1(a) (emphasis added).]

In the instant matter, I.R. is the child of a parent domiciled in Toms River. R.R., the father of I.R., who shares joint custody, resides in the District. Additionally, I.R.'s parents are domiciled in different districts and there *is* a written agreement between the parents designating Toms River School District as I.R.'s school district. To change the Agreement, petitioner's avenue of relief is through consent of R.R. or to seek to amendment of the Agreement by application to the Superior Court.

Petitioner seeks relief by way of out-of-district transportation from Toms River schools to and from Barnegat Township. The New Jersey Administrative Code prohibits the relief requested. Specifically, N.J.A.C. 6A:22-3.1(a)(1)(iv) states:

No school district shall be required to provide transportation for a student who resides outside the school district for all or part of the school year unless transportation is based upon the home of the parent or guardian domiciled within the school district or otherwise required by law.

The regulation explicitly states that a district is not required to provide transportation for a student residing outside the district, unless based upon the home of the parent within the district or as required by law. The District provides transportation to I.R. within the Toms River School District to and from I.R.'s father's home. There is no law requiring the District to provide transportation or transportation costs to I.R. from her mother's home in Barnegat. I.R.'s mother provided a consent order arising from the parents' divorce proceeding stating that the District shall provide busing for I.R. from the District to Barnegat. However, the District was not a party to that action. Without notice to be heard or consent by the District, the parents of I.R. cannot compel the District to provide out-of-district transportation and the District cannot be bound by same. There is no basis to require the District to provide transportation for I.R. between the District and Barnegat, or to pay the cost thereof. Thus, based on the foregoing analysis, petitioner's complaint should be dismissed for failure to state a cause of action.

CONCLUSION

Based on the foregoing, I **CONCLUDE** that no genuine issue of material fact exists as to whether respondent has an obligation to provide out-of-district transportation to I.R. The regulation clearly supports the conclusion that petitioner is not entitled to out-of-district transportation.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's motion to dismiss be and is hereby **GRANTED** and;

It is **FURTHER ORDERED** that T.C.R.'s petition be and is hereby **DISMISSED**.


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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING 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.

July 9, 2024

DATE



DEIRDRE HARTMAN-ZOHLMAN, ALJ

Date Mailed to Agency:

Date Mailed to Parties:

DHZ/jm

APPENDIX

EXHIBITS

For petitioner

Exhibits attached to petitioner's response to respondent's Motion to Dismiss:

- A-A Superior Court Order in related matrimonial matter, dated 12/20/2016
- A-B Email texts, dated January 2017
- A-C Print-out of Venmo payments, dated 2023

For respondent

Exhibits attached to respondent's Motion to Dismiss:

- R-A Petitioner's Appeal
- R-B Final Judgment of Divorce and Property Settlement Agreement
- R-C August 4, 2023, letter from R.R.'s attorney in related matrimonial matter