

New Jersey Commissioner of Education**Final Decision**

E.H., on behalf of minor child, K.H.,

Petitioner,

v.

Board of Education of the Village of Ridgefield Park,
Bergen County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that she and her minor child, K.H., are no longer domiciled in the Village of Ridgefield Park and that K.H. is therefore no longer entitled to a free public education in Ridgefield Park Schools. The Board contended that E.H. and K.H. have moved to Ridgefield, which is a different school district. The Board filed a motion for summary decision; no tuition reimbursement was sought for the period of K.H.'s ineligible attendance in Ridgefield Park schools.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; the respondent district held a residency appeal hearing on February 21, 2024; its decision, finding that petitioner and her daughter no longer resided within the district, was issued on February 22, 2024; the petitioner did not dispute that she has relocated; the family in this matter suffered a tragic loss that occurred soon after the Board issued the within residency decision; pursuant to *N.J.A.C. 6A:22-6.3(a)*, tuition may be assessed for the period of a student's ineligible enrollment; however, nothing in the chapter precludes an equitable determination, by the district board of education or the Commissioner, that, when the particular circumstances of a matter so warrant, tuition shall not be assessed; here, the respondent Board submitted no information as to tuition; therefore, no determination as to tuition can be made. The ALJ concluded that petitioner's residency appeal must be dismissed with prejudice.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter and dismissed the petition for the reasons expressed therein. 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.

299-24
OAL Dkt. No. 05122-24
Agency Dkt. No. 62-3/24

New Jersey Commissioner of Education

Final Decision

E.H., on behalf of minor child, K.H.,

Petitioner,

v.

Board of Education of the Village of Ridgefield Park,
Bergen 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 and her minor child, K.H., were not domiciled in Ridgefield Park as of February 2024. The Commissioner further concludes that K.H. was, therefore, not entitled to a free public education in the Ridgefield Park School District during that time.¹

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

IT IS SO ORDERED.²



ACTING COMMISSIONER OF EDUCATION

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

¹ The respondent did not seek reimbursement of tuition for the period of K.H.'s ineligible attendance.

² 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 05122-24

AGY. DKT. NO. 62-3/24

E.H. ON BEHALF OF MINOR CHILD K.H.,

Petitioner,

vs.

**BOARD OF EDUCATION OF THE
VILLAGE OF RIDGEFIELD PARK,
BERGEN COUNTY,**

Respondent.

E.H., on behalf of **K.H.**, petitioner, pro se

David L. Disler, Esq., for respondent (Porzio, Bromberg & Newman, P.C.,
attorneys)

Record Closed: July 1, 2024

Decided: July 1, 2024

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner appeals the Final Notice of Determination of Ineligibility by Respondent school district, dated February 22, 2024, wherein Respondent determined that the minor child was ineligible to attend school in Respondent school district.

Petitioner filed a pro se residency appeal with the Office of Controversies and Disputes in the New Jersey Department of Education on March 11, 2024.

Respondent filed its Answer via letter from its counsel, dated April 2, 2024.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on April 15, 2024, as a contested case.

A prehearing conference Order was held on May 1, 2024, and a Prehearing Order was entered on May 2, 2024.

The matter was listed for a hearing on June 12, 2024, but was adjourned to permit respondent to file a motion for summary decision. Said motion was received on May 13, 2024. Petitioner did not submit a reply to said motion. The matter was scheduled for oral argument on July 1, 2024, should either party request the same. Neither party did so.

ISSUE

Is the minor child eligible to attend school in the Village of Ridgefield Park school district.

I **FIND** the following undisputed **FACTS**:

At the time of the filing of the residency appeal K.H. was a senior attending Ridgefield Park High School. (see residency appeal)

The respondent Board had determined that petitioner and K.H. no longer resided in the Village of Ridgefield Park and had relocated to Ridgefield, New Jersey, which is a different school district. (See residency appeal and answer)

Petitioner filed a residency appeal with the respondent Board. Said appeal was heard on February 21, 2024. The Board's Final Notice Determination of Ineligibility,

dated February 22, 2024, found that petitioner and her daughter did not reside in the Village of Ridgefield Park and not entitled to a free education in said district. (see residency appeal and answer)

On March 3, 2024, petitioner and her family suffered a terrible tragedy when K.H.'s older sister committed suicide. (See residency appeal)

LEGAL ANALYSIS AND CONCLUSION

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “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, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

The material facts, as noted above, are entirely undisputed and the matter is ripe for summary decision.

Any child between the ages of five and twenty years old is entitled to a free public education in the district in which he is a resident.³ N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). A student is a resident of a school district if his parent or guardian has a

permanent home in the district such that “the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.” N.J.A.C. 6A:22-3.1(a)(1). A student may attend school in a district in which he is a non-resident, with or without payment of tuition, at the discretion of the school district. N.J.S.A. 18A:38-3(a); N.J.A.C. 6A:22-2.2.

If a school district discovers that a non-resident child is attending one of its schools, the district may act to remove the child. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.3. If so, the chief school administrator must first issue a notice of ineligibility. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.2, -4.3. The notice shall inform the parent of the right to a hearing before the school district and the right to appeal the school district’s decision to the Commissioner of Education. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-5.1. The notice shall also inform the parent whether the district’s policy allows for continued attendance, with or without tuition, for students who move out of the district during the course of the school year. N.J.A.C. 6A:22-4.2(b)(7)(i). If, on appeal to the Commissioner, the parent fails to demonstrate his child’s entitlement to attend the schools of the district, the parent may be liable for tuition for any period of ineligible attendance. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.2; N.J.A.C. 6A:22-6.2, -6.3.

In the instant matter the respondent district held a residency appeal hearing on February 21, 2024, and issued its decision on February 22, 2024, finding that petitioner and her daughter no longer resided within the district. Petitioner does not dispute that she has relocated.

According to N.J.A.C. 6A:22-6.3(a), “[t]uition assessed pursuant to the provisions of this section shall be calculated on a per student basis for the period of a student’s ineligible enrollment, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23-3.1. The individual student’s record of daily attendance shall not impact on such calculation.” However, “[n]othing in this chapter shall preclude an equitable determination, by the district board of education or the Commissioner, that, when the particular circumstances of a matter so warrant, tuition shall not be assessed

for all or part of any period of a student's ineligible attendance in the school district." N.J.A.C. 6A:22-6.3(b).

The respondent submitted no information as to tuition. Accordingly, no determination as to tuition can be made.

ORDER

It is hereby **ORDERED** that Petitioner's residency appeal is **DISMISSED**, with prejudice.

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 1, 2024

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

For Petitioner:

None

For Respondent:

Notice of Motion for Summary Decision

Letter brief in support of motion

Pleadings:

Residency Appeal

Answer