

New Jersey Commissioner of Education

Final Decision

L.M., on behalf of minor child, B.M.,

Petitioner,

v.

Board of Education of the Passaic County Manchester  
Regional High School District, Passaic County,

Respondent.

Synopsis

*Pro se* petitioner appealed the determination of the respondent Board that he and his minor child, B.M., were not domiciled in the respondent Board’s school district (District) and that B.M. was therefore not entitled to a free public education in the District during the 2023-2024 school year. The Board contended that no residency verification was ever received from B.M.’s family to show that he was entitled to attend school in the District, despite multiple requests to B.M.’s mother to provide necessary documentation over the course of the 2022-2023 school year. The within petition was filed by B.M.’s father in August 2023, prior to the start of the 2023-2024 school year. Petitioner subsequently failed to appear for two pre-hearing telephone conferences and also failed to appear at the hearing in this matter.

The ALJ found, *inter alia*, that: petitioner has abandoned his appeal by failure to appear at all scheduled conferences and the hearing; petitioner failed to demonstrate that he and B.M. were domiciled in the respondent Board’s school district as of September 7, 2023; a student who is domiciled in the District may attend Manchester Regional but may also attend Passaic County Technical Institute (“PCTI”); if the student attends PCTI, the Board must pay the student’s tuition; petitioner’s son, B.M., was such a student; as petitioner has offered no proof of residency in the District, tuition reimbursement for B.M.’s attendance at PCTI is owed to the Board. Accordingly, the ALJ awarded the Board tuition in the amount of \$5,250.45, based on eighty-seven school days of ineligible attendance between September 7, 2023 and the date of the Initial Decision on January 8, 2024, at a daily tuition rate of \$60.35. The petition was dismissed with prejudice.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter but corrected an error in the number of school days for which tuition reimbursement is due to the Board. Accordingly, the petitioner was directed to reimburse the Board in the amount of \$4,646.95 for the period from September 7, 2023 through January 8, 2023, plus \$60.35 for each school day from January 9, 2024 through the date of the within final decision. Further, the Commissioner ordered B.M. to be disenrolled from the District and ordered that the Board is no longer obligated to pay B.M.’s tuition for PCTI. The petition of appeal 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.

83-24

OAL Dkt. No. EDU 08009-23

Agency Dkt. No. 213-8/23

**New Jersey Commissioner of Education**

**Final Decision**

L.M., on behalf of minor child, B.M.,

Petitioner,

v.

Board of Education of the Passaic County  
Manchester Regional High School District,  
Passaic County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the Passaic County Manchester Regional High School District Board of Education (Board) pursuant to *N.J.A.C. 1:1-18.4* have been reviewed and considered. Petitioner did not file exceptions or a reply to the Board's exceptions.

This matter arises from the Board's determination that petitioner and his minor child, B.M., were not domiciled in the Passaic County Manchester Regional High School District (District) and that B.M. was, therefore, not entitled to a free public education in the District. Following petitioner's failure to appear for two telephone conferences and a hearing, the Administrative Law Judge (ALJ) found that petitioner had abandoned his appeal. The ALJ further found that petitioner had not demonstrated that he and B.M. were domiciled in the District as of September 7, 2023. Accordingly, the ALJ awarded the Board tuition

reimbursement in the amount of \$5,250.45, based on eighty-seven school days of ineligible attendance between September 7, 2023 and the date of the decision on January 8, 2024,<sup>1</sup> at a daily tuition rate of \$60.35.<sup>2</sup>

In its exceptions, the Board requested that the Commissioner modify the tuition reimbursement calculation to include the period between the Initial Decision and the Commissioner's final decision. The Board further requested that the Commissioner determine that B.M. has been disenrolled and that the Board no longer has the obligation to pay for B.M. to attend Passaic County Technical Institute (PCTI) after his disenrollment.

Upon review, the Commissioner concurs with the ALJ that petitioner abandoned his appeal and failed to sustain his burden of establishing that he and B.M. were domiciled in the District as of September 7, 2023. The Commissioner concludes that B.M. 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 petitioners for the time period during which B.M. was ineligible to attend school in the District. Although the ALJ indicated that there were eighty-seven school days between September 7, 2023 and January 8, 2024, an independent review of the District's 2023-2024 calendar demonstrates that there have only been seventy-seven school days during that period.<sup>3</sup> Therefore, the Board is entitled to tuition reimbursement in the amount of \$4,646.95 for the period from

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<sup>1</sup> It appears that the ALJ may have determined the number of days of ineligible attendance based on testimony; however, a transcript was not provided to the Commissioner. The record does not contain a copy of the school's calendar.

<sup>2</sup> The daily tuition rate is calculated as 1/180<sup>th</sup> of the annual tuition rate of \$10,864.00 reflected in the Board's contract with PCTI (Exhibit R-13).

<sup>3</sup> <https://4.files.edl.io/ae08/05/24/23/174121-0b937d8f-426d-45ba-b362-be20ff8867fb.pdf>, last visited January 17, 2024. The calculation is 17 (September) + 21 (October) + 18 (November) + 16 (December) + 5 (January) = 77 days.

September 7, 2023 through January 8, 2024, as well as \$60.35 for each school day from January 9, 2024 through the date of the Commissioner's final decision.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, as modified herein. Petitioner is directed to reimburse the Board in the amount of \$4,646.95 for the period from September 7, 2023 through January 8, 2023, plus \$60.35 for each school day from January 9, 2024 through the date of the Commissioner's final decision. B.M. is hereby disenrolled from the District, and the Board no longer has an obligation to pay B.M.'s tuition for PCTI. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>4</sup>

  
ANGELINA ALLEN McMILLAN, J.D. S.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 26, 2024  
Date of Mailing: January 31, 2024

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<sup>4</sup> 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 08009-23

AGENCY DKT. NO. 213-8/23

**L.M. ON BEHALF OF B.M.,**

Petitioner,

v.

**PASSAIC COUNTY MANCHESTER  
REGIONAL HIGH SCHOOL DISTRICT  
BOARD OF EDUCATION, PASSAIC  
COUNTY,**

Respondent.

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**No appearance by L.M., petitioner, pro se**

**Rodney T. Hara, Esq., for respondent (Fogarty & Hara, attorneys)**

Record Closed: December 11, 2023

Decided: January 8, 2024

BEFORE **DANIEL J. BROWN, ALJ:**

**STATEMENT OF THE CASE**

Petitioner, parent of minor child B.M., challenges respondent's residency determination. In its counterclaim, respondent seeks reimbursement of tuition from petitioner, asserting that petitioner did not establish that B.M. was domiciled within the

school district during the 2023–2024 school year. In a residency appeal, the parent has the burden of proof to show by a preponderance of the evidence that the parent’s minor child was domiciled in the school district. N.J.S.A. 18A:38-1(b)(2). Has petitioner shown by a preponderance of the evidence that B.M was domiciled in the school district? No. Petitioner has provided no testimony or documentary evidence to show that B.M. was domiciled in the school district.

### **PROCEDURAL HISTORY**

On July 13, 2023, respondent determined that petitioner did not demonstrate that his child, B.M., was domiciled in the district. On July 20, 2023, petitioner filed a residency appeal on behalf of his child and, on August 18, 2023, respondent filed an answer. On August 21, 2023, the New Jersey State Department of Education transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

Petitioner failed to participate in scheduled telephone conferences which were held on September 22, 2023, and October 18, 2023 despite being notified of those telephone conferences by email and regular mail. On October 19, 2023, the parties were notified by email and regular mail that a peremptory hearing date was scheduled for December 11, 2023. As the petitioner did not appear for the hearing, an ex parte hearing took place at the OAL in Newark, New Jersey on that date. Respondent presented testimony and exhibits, and the record was closed on December 11, 2023.

### **FINDINGS OF FACT**

Having reviewed and considered the testimony and, the documentary evidence presented at the hearing, I **FIND** the following **FACTS** in this matter:

Petitioner did not appear for the hearing despite being afforded proper notice of the hearing date by email and regular mail. There is no indication that petitioner did not receive notice of the hearing. Petitioner never called or wrote to the OAL explaining his

failure to appear for the hearing or to request an adjournment. I therefore **FIND** that petitioner has abandoned his appeal.

Respondent is a regional public school district consisting of one high school, Manchester Regional High School, which serves students from Haledon, North Haledon and Prospect Park. A student who is domiciled in respondent's school district may attend Manchester Regional but may also attend Passaic County Technical Institute ("PCTI"). If the student attends PCTI, respondent must pay the student's tuition. The board of education for the school district passed a resolution requiring annual verification of residency for high school students who were determined to be eligible to attend Manchester High School but attended PCTI instead. Petitioner's son was such a student.

On September 26, 2022, Gary Lubisco, Jr., the superintendent of Manchester Regional High School, sent B.M.'s mother a letter requesting residency verification for B.M. to be provided no later than September 30, 2022. There was no response by B.M.'s mother to that request. On November 16, 2022, Mr. Lubisco sent a second request to B.M.'s mother seeking verification of B.M.'s residency. Again, there was no response by B.M.'s mother to that request. On January 30, 2023, Mr. Lubisco sent a letter to B.M.'s mother seeking to obtain verification of B.M.'s residency. Again, B.M.'s mother failed to provide any residency information or respond in any way to Mr. Lubisco. On February 1, 2023, Mr. Lubisco sent another letter to B.M.'s mother seeking verification of B.M.'s residency. Again, B.M.'s mother failed to respond to that request. On March 28, 2023, Mr. Lubisco sent a letter to B.M.'s mother informing her that B.M. was not eligible to have respondent continue to pay his tuition at PCTI based upon the lack of verification of B.M.'s address. The letter gave B.M.'s mother until April 21, 2023, to provide verification of B.M.'s residency. The letter also informed B.M.'s mother that there would be a hearing regarding B.M.'s residency before respondent on April 27, 2023. Because B.M.'s mother failed to provide the requested information, Mr. Lubisco resent his March 28<sup>th</sup> letter to B.M.'s mother on April 5, 2023 and April 18, 2023. B.M.'s mother failed to respond to Mr. Lubisco's April 5<sup>th</sup> or April 18<sup>th</sup> letters. On April 24, 2023, respondent sent B.M.'s mother a letter entitled "Summary for Board Hearing". That letter stated that B.M. was not eligible to have respondent continue to pay his tuition at PCTI based upon his mother's failure to provide verification of B.M.'s residency. Respondent's letter also informed B.M.'s mother

that there would be a hearing before the respondent on April 27, 2023 and that proof of residency for B.M. could be provided prior to or at the hearing.

At the hearing, respondent determined that it was not established that B.M. lived in the district. At the next Board meeting, on July 13, 2023, respondent voted to disenroll B.M. from the district based on the failure of B.M.'s mother to provide the requested verification of B.M.'s residency. On July 14, 2023, the Board's secretary sent B.M.'s mother a letter advising that B.M. was not entitled to a tuition-free education in the district or at PCTI since it was not established at the hearing that B.M. was domiciled in the district. B.M.'s mother was also informed that tuition would be assessed upon her for each day that B.M. attended Manchester Regional or PCTI when he was ineligible for a tuition-free education in the district. The letter further advised that the estimated annual cost of tuition was \$10,864 and that respondent would continue to pay B.M.'s tuition while any appeal of the respondent's decision was pending.

Petitioner filed the instant appeal challenging the Board's decision. B.M. continues to attend PCTI during this school year and respondent has continued to pay his tuition during the pendency of his appeal. Petitioner has failed to present any evidence that his son was ever domiciled in any of the towns within the regional school district despite being given notice and an opportunity to do so. As no evidence has been presented that B.M. was domiciled in the school district during this school year, respondent seeks tuition reimbursement for B.M.'s attendance at PCTI for this school year. Respondent's school year started on September 7, 2023. Respondent's daily tuition rate is \$60.35. Eighty-seven school days, excluding holidays, have elapsed from the start of the school year to the date of issuance of this decision. The amount of tuition due to the respondent as of the date of this decision is \$5,250.45.

### **LEGAL ANALYSIS AND CONCLUSIONS**

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. 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).

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 that of his or her parent, custodian or guardian. P.B.K. o/b/o minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super 419, 427 (App. Div. 2001). Where the local board determines that a child is not properly domiciled in its district, N.J.S.A. 18A:38-1(b)(2) provides a right of appeal to the parents.

N.J.A.C. 6A:22-6.2(a) authorizes the Commissioner of Education to assess tuition for non-resident students. It states:

If in the judgement of the Commissioner the evidence does not support the claim of the resident, he shall assess the resident tuition for the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be 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 and shall be collected in the manner in which orders of the Commissioner are enforced.

On appeal, the petitioner has the burden of proof to show by a preponderance of the evidence that their minor child was domiciled in the school district. N.J.S.A. 18A:38-1(b)(2). Here, the petitioner has failed to appear for the scheduled hearing, without explanation, and as a result, I **CONCLUDE** that the petitioner has abandoned his appeal and the petition should be dismissed.

Based upon the facts adduced at the hearing and the exhibits introduced by respondent, I **CONCLUDE** that petitioner has not demonstrated that B.M. is domiciled in the school district. I also **CONCLUDE** that respondent is entitled to tuition reimbursement in the amount of \$5,250.45.

**ORDER**

I **ORDER** that the petitioner's residency appeal is **DISMISSED** with prejudice. I further **ORDER** that respondent's counterclaim seeking tuition reimbursement in the amount of \$5,250.45 is **GRANTED**.

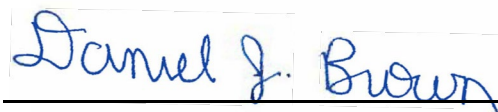
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

January 8, 2024 \_\_\_\_\_

DATE



\_\_\_\_\_  
**DANIEL J. BROWN, ALJ**

Date Received at Agency:

January 8, 2024 \_\_\_\_\_

Date Mailed to Parties:

January 8, 2024 \_\_\_\_\_

dr

**APPENDIX**

**Witnesses**

**For Petitioner:**

None

**For Respondent:**

Gary Lubisco, Jr

**Exhibits**

**For Petitioner:**

None

**For Respondent:**

- R-1 Annual Residency Verification resolution, dated November 4, 2022
- R-2 Notice of Residency Verification, dated July 7, 2022
- R-3 Second Notice of Residency Verification, dated November 16, 2022
- R-4 Third Notice of Residency Verification, dated January 30, 2023
- R-5 Third Notice of Residency Verification, dated February 1, 2023
- R-6 Notice of Initial Determination of Ineligibility, dated March 28, 2023
- R-7 Notice of Initial Determination of Ineligibility, dated April 5, 2023
- R-8 Notice of Initial Determination of Ineligibility, dated April 18, 2023
- R-9 Summary for Board Hearing, dated April 24, 2023
- R-10 Notice of Unsuccessful Residency Verification, dated April 27, 2023
- R-11 Disenrollment Resolution, dated July 27, 2023
- R-12 Disenrollment Letter, dated July 14, 2023
- R-13 Tuition Contract for County Vocational School, 2023-2024 School Year