

New Jersey Commissioner of Education
Final Decision

E.M., on behalf of minor children, E.B. and Z.B.,

Petitioner,

v.

Board of Education of the Township of Mount
Olive, Morris 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 petitioner failed to sustain her burden of establishing that her children, E.B. and Z.B., were domiciled in the Mount Olive school district between December 1, 2023, and the end of the 2023-2024 school year. The Commissioner also concurs with the ALJ that the children were, therefore, not entitled to a free public education in the district during this time period. *N.J.S.A. 18A:38-1(a)*.

Pursuant to *N.J.S.A. 18A:38-1(b)*, the Commissioner shall assess tuition against petitioner for the time period during which the minor children were 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:38-1(b)*.

The Board's counterclaim sought tuition for E.B. of \$13,666.95 (\$112.95/day x 121 days of ineligible attendance) and transportation costs for Z.B. of \$2100 (\$300 per month x 7 months), and the ALJ ordered that said amount be assessed to petitioner. However, the record does not contain a supporting certification from the Board's Business Administrator or other district employee regarding the per diem rate or the number of days of ineligible attendance.¹ Without sufficient proofs, the Commissioner is unable to assess tuition against petitioner at this time.

Accordingly, the matter is remanded to the OAL for further proceedings to develop the factual record regarding the per diem rate and the number of days of ineligible attendance.²

IT IS SO ORDERED.


COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2025

Date of Mailing: May 27, 2025

¹ The record indicates that petitioner transferred the children out of the Mount Olive school district on June 3, 2024, when the family relocated to Florida.

² If Board witnesses testified regarding the per diem rate and the number of days of ineligible attendance for each child, the ALJ may update the Initial Decision on remand to reflect this information without the need to obtain a certification from the Board.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 07408-24

AGENCY DKT. NO. 127-5/24

**E.M. ON BEHALF OF MINOR
CHILDREN, E.B. and Z.B.,**

Petitioner,

v.

**TOWNSHIP OF MOUNT OLIVE BOARD
OF EDUCATION, MORRIS COUNTY,**

Respondent.

No appearance by E.M., petitioner, pro se

John G. Geppert, Jr., Esq., for respondent (Scarinci Hollenbeck, LLC, attorneys)

Record Closed: February 7, 2025

Decided: April 29, 2025

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

STATEMENT OF THE CASE

The petitioner, parent of minor children, E.B. and Z.B., challenges the respondent's residency determination. In its counterclaim, the respondent seeks reimbursement of tuition from the petitioner, asserting that the petitioner did not establish that E.B. and Z.B. were domiciled within the school district from December 1, 2023 to the end of the 2023–

2024 school year. In a residency appeal, under N.J.S.A. 18A:38-1(b)(2), the parent has the burden of proof to show by a preponderance of the evidence that the parent's minor child or minor children were domiciled in the school district. Has the petitioner shown by a preponderance of the evidence that E.B. and Z.B. were domiciled in the school district from December 1, 2023, to the end of the 2023 – 2024 school year? No. The petitioner has provided no testimony or documentary evidence to show that E.B. and Z.B. were domiciled in the school district during that time.

PROCEDURAL HISTORY

In the 2023 – 2024 school year, E.B. was a first-grade student at Chester M. Stephens elementary school (CMS). Z.B. was enrolled in the afternoon pre-kindergarten program as a classified student at Mountain View elementary school. In early February 2024, the respondent sent the petitioner a letter to the address provided by the petitioner, 57 Village Green, Apartment, Unit G, Budd Lake, N.J. 07828. The letter was returned to the respondent with no forwarding information. As a result, the respondent commenced a residency investigation concerning E.B. and Z.B. The investigation determined that E.B. and Z.B. were moved out of the school district by the petitioner on December 1, 2023, and resided at 106 Main Street, Succasunna, New Jersey 07876. On March 28, 2024, the respondent notified the petitioner of the results of the investigation and of a board hearing regarding the residency of E.B. and Z.B. to be held on April 10, 2024. On April 8, 2024, the petitioner submitted a form to the respondent indicating that she and her children faced unexpected homelessness due to a rent increase during the renewal of the petitioner's lease. On the form, the petitioner indicated she was staying with her children in a home or apartment doubling up with family, friends or other relatives due to hardship or similar reasons. On April 10, 2024, the respondent held a hearing that was participated in by the petitioner. Following the hearing, the respondent concluded that E.B. and Z.B. were not domiciled in the school district as of December 1, 2023, and that the children were disenrolled from the district.

On April 18, 2024, the respondent sent correspondence to the Morris County Executive Superintendent of Schools (Executive Superintendent) regarding whether E.B. and Z.B. were homeless and should therefore attend Roxbury Township schools. On

April 26, 2024, the Executive Superintendent sent a letter to the respondent's superintendent of schools that concluded that E.B. and Z.B. were not homeless.

On May 6, 2024, the petitioner filed a residency appeal on behalf of her children, and, on May 23, 2024, respondent filed an answer and counter claim for tuition. The tuition that the respondent sought for E.B. was \$13,666.95 for 121 days. The tuition that the respondent sought for Z.B. was \$2,100 for 7 months. On May 24, 2024, 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. The OAL received the case on the same day. The case was assigned to me on June 5, 2024.

On June 19, 2024, July 25, 2024, October 22, 2024, and October 30, 2024, I held prehearing conferences under N.J.A.C. 1:1-13.1 to discuss hearing availability dates, the nature of the proceeding, the issues to be resolved, and any unique evidentiary problems. I also permitted additional time for discovery. During a telephone conference with the parties on October 20, 2024, I scheduled the hearing for December 2, 2024, and December 3, 2024. I also granted the petitioner's request to appear via zoom for the hearing, but I required the respondent and the respondent's witnesses to appear in person for the hearing. On December 1, 2024, the petitioner sent an email to me requesting an adjournment of the hearing that was scheduled to begin the next day because she was scheduled to start a new job. I denied the adjournment request.

I conducted the hearing on December 2, 2024. The petitioner did not appear and did not contact me to explain her failure to appear. 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. At the hearing, the respondent presented testimony and exhibits. The respondent requested the opportunity to file a written summation, and I approved that request. I gave the parties until February 3 to file written summations. On February 3, 2025, I received the respondent's written summation. The petitioner failed to submit a written summation and failed to file an extension of time to do so. I kept the record open until February 5 to give the petitioner additional time to file a written summation or request additional time to

do so. After receiving no communication from the petitioner, I closed the record on February 5, 2025. On March 24, 2025, I requested an extension of time to file an initial decision, which was approved.

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:

Abandonment

The petitioner requested to appear for the hearing via zoom and that request was approved. Despite this, the petitioner did not appear for the hearing. The petitioner was afforded proper notice of the hearing date by email and regular mail. The petitioner requested an adjournment of the hearing on the night before the hearing via email because she was scheduled to start a new job. The adjournment request was denied, and the petitioner was notified of the denial of the adjournment request via email. There is no indication that the petitioner did not receive notice of the denial of the adjournment request. The petitioner failed to submit a written summation by the due date or to request an extension of time to do so. In fact, the petitioner has failed to contact the OAL since her adjournment request was denied on December 1, 2024, the day before the hearing. I therefore **FIND** that the petitioner has abandoned her appeal.

The Residency Investigation

The respondent commenced a residency investigation regarding E.B. and Z.B. after a letter sent to the petitioner by the respondent at the in-district address the petitioner provided to the respondent was returned without forwarding information. The investigator started his investigation on February 6, 2024, and concluded it on March 10, 2024. The investigator discovered that E.B. was always dropped off and picked up at school by his mother or his aunt, even though he had an assigned school bus. Additionally, the property manager for the Village Green Apartments informed the investigator that the petitioner and her children had moved from the Apartment Complex on December 1, 2023. The

investigator learned that the petitioner informed the United States Post Office (USPS) that her new address was 106 Main Street, Succasunna, N.J. 07876. Additionally, the investigator learned from a social media post published by the petitioner that the petitioner changed her driver's license to reflect her new address. From the same post, the investigator learned from that the petitioner moved in with her sister and brother-in-law at 106 Main Street, Succasunna to help care for her brother-in-law who had suffered a stroke. The investigator observed that this residence had two doors that were used to enter or exit the residence. The investigator observed that the petitioner and her children always entered or exited through one door while the petitioner's sister and brother-in-law always used the other door.

On the afternoon of February 6, 2024, the investigator observed that E.B. was picked up from CMS school by a white Toyota Rav-4. The investigator followed the vehicle and observed it pulling into a driveway at 106 Main Street in Succasunna. Once the Toyota Rav-4 was parked, the investigator observed the petitioner, E.B. and Z.B. exit the vehicle and enter the residence. On the mornings of February 7, 2024, February 8, 2024, and March 1, 2024, the investigator observed the petitioner, Z.B., and E.B. exit the residence at 106 Main Street and enter the Rav-4. On each day, the investigator followed the Rav-4 as it drove to the Goddard School in Flanders, New Jersey and dropped off Z.B. at the school. The Rav-4 then proceeded to CMS school and dropped E.B. off at that school.

On the mornings of February 9, 2024, February 15, 2024, February 21, 2024, February 22, 2024, March 4, 2024, March 7, 2024, and March 8, 2024, the investigator observed the petitioner, Z.B., and E.B. exit the residence at 106 Main Street in Succasunna and enter the Rav-4. On each day, the investigator followed the Rav-4 as it drove to CMS school and dropped E.B. off at that school. On the mornings of February 12, 2024, and March 5, 2024, the investigator observed the petitioner driving the white Rav-4 arrive at CMS school and drop E.B. off at that school. On the late evenings of February 13, 2024, February 19, 2024, February 25, 2024, February 29, 2024, March 3, 2024, March 9, 2024, and March 10, 2024, the investigator observed the white Rav-4 parked in the driveway of the residence or on the street near the residence at 106 Main Street in Succasunna. On the morning of February 14, 2024, the investigator observed

the petitioner exit the residence at 106 Main Street in Succasunna on three occasions and go to the white Rav-4 parked in the driveway to get something from the vehicle or put something in the vehicle. The petitioner then drove Z.B. to the Goddard school in Flanders and dropped Z.B. off at that school. On the afternoon of February 18, 2024, the investigator observed the petitioner exit the residence at 106 Main Street in Succasunna, enter the white Rav-4 parked in the driveway and drive away.

On the morning of February 26, 2024, the investigator observed the petitioner, and another female exited the residence located at 106 Main Street in Succasunna. The other female entered a white Honda Civic that was parked in the driveway and drove away. The petitioner entered the white Rav-4 parked in the driveway and drove away. On the mornings of February 27, 2024, and February 28, 2024, the investigator observed the petitioner, Z.B., and E.B. exit the residence at 106 Main Street in Succasunna, enter the Rav-4, and drive away. On each day, the investigator followed the Rav-4 as it drove to the Goddard School in Flanders, New Jersey and dropped off Z.B at the school.

Based on his investigation, the investigator concluded that the petitioner was living in Roxbury with a fixed, regular and adequate residence. I agree.

Tuition

The Petitioner filed the instant appeal challenging the respondent's decision that her children were not domiciled in the district from December 1, 2023, to the end of the 2023- 2024 school year. The petitioner's children, E.B. and Z.B. continued to attend schools in the respondent's district from December 1, 2023, to the end of the 2023- 2024 school year despite being moved out of district as of December 1, 2023. The Petitioner has failed to present any evidence that her children were domiciled in any of the towns within the Mt. Olive school district despite being given notice and an opportunity to do so. As no evidence has been presented that E.B. and Z.B. were domiciled in the school district from December 1, 2023, to the end of the 2023-2024 school year, the Respondent seeks tuition reimbursement for both children. The respondent submits that total tuition for E.B., calculated at a per diem rate of \$112.95 per day for 121 days amounts to

\$13,666.95. I agree. The respondent submits that the total tuition for Z.B. calculated at a monthly rate of \$300 per month for 7 months is \$2,100. I agree.

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 after being

permitted to appear remotely via zoom. As a result, I **CONCLUDE** that the petitioner has abandoned her appeal, and the petition should be dismissed.

Based upon the facts adduced at the hearing and the exhibits introduced by the respondent, I **CONCLUDE** that the petitioner has not demonstrated that E.B. and Z.B. were domiciled in the school district from December 1, 2023, to the end of the 2023-2024 school year. I also **CONCLUDE** that the respondent is entitled to tuition reimbursement in the amount of \$13,666.95 for E.B. and \$2,100 for Z.B. for total tuition reimbursement of \$15,766.95

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 \$15,766.95 is **GRANTED**.

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

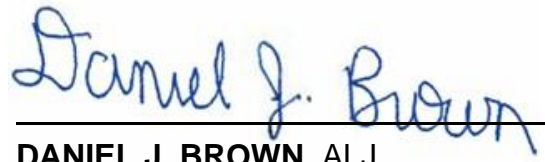
This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five 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.

April 29, 2025

DATE



DANIEL J. BROWN, ALJ

Date Received at Agency:

April 29, 2025

Date Mailed to Parties:
or

April 29, 2025

APPENDIX

Witnesses

For Petitioner:

None

For Respondent:

James Carifi

Sumit Bangia

Exhibits

For Petitioner:

None

For Respondent:

- R-1 Board Policy No. 5111- Eligibility of Resident/ Nonresident students
- R-2 Residency investigation report dated March 11, 2024
- R-3 Notice of residency hearing
- R-4 McKinney Vento Act forms
- R-5 Board Residency Hearing Resolution
- R-6 Supplemental residency investigation report dated May 13, 2024
- R-7 Board Policy No. 5116- Education of Homeless children and youths
- R-8 Notice of Initial Determination of Ineligibility, dated April 16, 2024
- R-9 Request for Homeless pupil determination dated April 18, 2024
- R-10 Homeless pupil determination dated April 26, 2024