

28-25

OAL Dkt. No. EDU 09070-2024 (EDU 01560-2024 on remand)

Agency Dkt. No. 18-1/24

New Jersey Commissioner of Education

Final Decision

D.D., on behalf of minor children, A.D., J.D.,
K.D., J.D., and K.D.,

Petitioner,

v.

Board of Education of the Borough of Magnolia,
Camden County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) on remand have been reviewed and considered. The parties did not file exceptions.

This matter concerns the December 20, 2023 determination by the Magnolia Board of Education (Board) that petitioner and his five minor children have not been domiciled in the Borough of Magnolia since at least November 11, 2023, and the Board's demand for payment of tuition for the period of the children's ineligible attendance in the district during the 2023-2024 school year.

On May 23, 2024, the Commissioner issued a Final Decision and agreed with the Administrative Law Judge (ALJ) that the Board was entitled to tuition reimbursement from petitioner. Accordingly, the Commissioner granted the Board's motion for summary decision and dismissed petitioner's appeal. However, the record lacked information regarding the number of

days of ineligible attendance and the Commissioner was unable to assess tuition against petitioner at that time. The Commissioner remanded the matter to the OAL for further proceedings to develop the factual record regarding the number of days of ineligible attendance so that the tuition amount owed to the Board could be calculated.

On remand, the ALJ found that all five children were ineligible to attend school in the district beginning on November 17, 2023, through April 21, 2024. The ALJ further found that on April 22, 2024, the children transferred out of the district. The ALJ also found that the daily per pupil tuition rate for the 2023-2024 school year was \$104.39, which equates to a combined daily rate of \$521.95 ($\104.39×5 children). Thus, the ALJ concluded that the total amount of tuition owed to the Board for the children's ineligible attendance from November 17, 2023, through April 21, 2024, is \$49,063.30 ($\521.95×94 days).

Upon review, the Commissioner concurs with the ALJ's findings and conclusions, except that the Commissioner finds that there were 95 school days from November 17, 2023, through April 21, 2024, according to the Magnolia School District 2023-2024 School Calendar (R-2). Pursuant to *N.J.A.C. 6A:22-6.2(a)*, if "petitioner does not sustain the burden of demonstrating the student's right to attend the school district, . . . the Commissioner may assess tuition for the period during which the hearing and decision on appeal were pending, and for up to one year of a student's ineligible attendance in a school district prior to the appeal's filing and including the 21-day period to file an appeal." *N.J.S.A. 18A:38-1(b)* provides that the Commissioner may order tuition "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." Based upon a combined daily rate of

\$521.95 and 95 days of ineligible attendance for each child, the total amount of tuition owed by petitioner to the Board is \$49,585.25.

Accordingly, the Initial Decision on remand is adopted, as modified, and the Board's claim for tuition payment is granted. Petitioner shall pay the Board \$49,585.25 for the children's tuition costs incurred during the 2023-2024 school year.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 29, 2025
Date of Mailing: January 29, 2025

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 09070-2024
AGENCY DKT. NO. 18-1/24
(ON REMAND EDU 01560-2024)

**D.D. ON BEHALF OF MINOR CHILDREN,
A.D., J.D., K.D., J.D. AND K.D.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF MAGNOLIA, CAMDEN COUNTY,**

Respondent.

No appearance by or on behalf of the pro se petitioner, **D.D.**

William C. Morlock, Esq., for respondent (Gorman, D'Anella & Morlock, attorneys)

Record Closed: November 20, 2024

Decided: December 3, 2024

BEFORE **REBECCA C. LAFFERTY, ALJ**:

STATEMENT OF THE CASE

Petitioner, D.D. (petitioner or D.D.), the father of minor children, A.D., J.D., K.D., J.D., and K.D., appealed the December 19, 2023 determination by the respondent, Board of Education of the Borough of Magnolia, Camden County (respondent or Board), that

A.D., J.D., K.D., J.D., and K.D. were not domiciled within the Borough of Magnolia School District (District) and that tuition reimbursement is required. The respondent alleged that the minor children A.D., J.D., K.D., J.D., and K.D., were not residing at the address provided by the petitioner within the District and seeks repayment of tuition.

The matter was decided by way of a motion for summary decision. An Initial Decision issued by this Tribunal under OAL Docket No. EDU 01560-24, dated April 18, 2024, granted the respondent's motion for summary decision and dismissed the petitioner's residency appeal. The Initial Decision was affirmed by a Final Decision of the Commissioner of Education (Commissioner), dated May 23, 2024. The Commissioner remanded the matter to the Office of Administrative Law (OAL) for further proceedings to develop the factual record regarding the number of days of each child's period of ineligible attendance so that the tuition amount owed to the respondent may be calculated.

PROCEDURAL HISTORY

By letter, dated December 20, 2023, the respondent notified petitioner that A.D., J.D., K.D., J.D., and K.D. were ineligible to continue to attend school within the District as they were no longer domiciled in the District. The petitioner filed a Pro Se Residency Appeal on or about January 24, 2024. The respondent filed an Answer and Cross Petition for tuition on February 1, 2024. The Department of Education Office of Controversies and Disputes transmitted this matter to the OAL where it was filed on February 1, 2024, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

Several telephone conferences were conducted and on March 6, 2024, an email was sent to the parties confirming the briefing schedule for a motion for summary decision. The respondent filed a motion for summary decision on March 13, 2024. Petitioner's opposition to the summary decision motion was due on April 1, 2024, but no opposition was received by the OAL on that date. A follow-up email was sent to the parties on April 2, 2024, and a status conference was held on April 8, 2024, at which time petitioner advised that he wished to submit a response to the respondent's summary

decision motion. On April 15, 2024, petitioner submitted an email in opposition to the summary decision motion, and on that same date, counsel for the respondent notified this Tribunal that the respondent would not be filing a reply brief. The record closed on April 15, 2024, and this Tribunal issued an Initial Decision, dated April 18, 2024. (C-1.)

No exceptions were filed to the Initial Decision and the Commissioner issued a Final Decision, dated May 23, 2024, granting the respondent's motion for summary decision and dismissing the petitioner's residency appeal. The Commissioner remanded the matter to the OAL for further proceedings to develop the factual record regarding the number of days of each child's period of ineligible attendance so that the tuition amount owed to the respondent may be calculated. (C-2.)

Telephonic conferences were held on September 4, 2024, and September 19, 2024. Respondent's counsel appeared at both conferences; however, the petitioner did not appear at either conference, and did not contact the Tribunal requesting any adjournments. A fact-finding hearing was held on November 20, 2024, via Zoom video/audio technology. The petitioner did not attend the Zoom hearing. Notice of the Zoom hearing was sent to the petitioner via email and regular mail. The regular mail was not returned. The record closed on November 20, 2024.

FACTUAL DISCUSSIONS AND FINDINGS

Summary of Relevant Testimony

Paul Sorrentino (Sorrentino), Principal, testified on behalf of the respondent. Sorrentino stated that D.D. had five children, A.D., J.D., K.D., J.D., and K.D., enrolled in the District for the 2023-2024 school year. He further stated that it was reported to him prior to November 14, 2023, that D.D. and his five children were no longer residing in the school district. (R-1, Certification of Paul Sorrentino, Principal.) On November 14, 2023, he drove by the address listed for the family and noticed no window coverings, no vehicles, and a great amount of construction trash out front of the house. (R-1,

Certification of Paul Sorrentino, Principal.) Sorrentino returned on November 17, 2023, and spoke with a construction worker who gave him the landlord's phone number. Sorrentino contacted the landlord and was able to confirm that D.D. and his five children were no longer living at that address within the District. Sorrentino testified that the five children transferred out of the District on April 22, 2024. Sorrentino confirmed that the per pupil daily tuition rate for the District is \$104.39 (or \$521.95 per day for all five children). (R-1, Certification of Paul Sorrentino, Principal.) The total tuition amount owed for five children for ninety-four days is \$49,063.30.

After reviewing the school calendar with counsel and this Tribunal, Mr. Sorrentino made the following corrections to his Certification (R-2.):

1. The first day of ineligible attendance for A.D., J.D., K.D., J.D., and K.D. was November 17, 2023.

2. The last day of ineligible attendance for A.D., J.D., K.D., J.D., and K.D. was April 21, 2024.

3. There were ninety-four school days between November 17, 2023, and April 21, 2024, inclusive.

Factual Findings

I hereby incorporate the undisputed factual findings contained within the Initial Decision, dated April 18, 2024, as if set forth more fully herein. (C-1.)

Based upon a review of the testimony and the documentary evidence presented and having had the opportunity to observe the demeanor and assess the credibility of the witness who testified, I **FIND** the following additional undisputed **FACTS**:

A.D., J.D., K.D., J.D., and K.D. were not domiciled within the District from November 17, 2023 through April 21, 2024, while attending school within the District. There were ninety-four school days between November 17, 2023, and April 21, 2024, inclusive. The daily per pupil tuition rate for the District for the 2023-2024 school year was \$104.39, which equates to a combined daily rate of \$521.95 for all five children. (See R-1, Certification of Paul Sorrentino, Principal.) The total amount of tuition owed for A.D., J.D., K.D., J.D., and K.D. for November 17, 2023 through April 21, 2024, is \$49,063.30.

LEGAL ANALYSIS AND CONCLUSIONS

The issue on remand is the determination of the number of days of A.D., J.D., K.D., J.D., and K.D.'s ineligible attendance within the District during the 2023–2024 school year.

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). N.J.A.C. 6A:22-3.1(a)(1) provides: “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.” See also P.B.K. ex rel. minor child E.Y. v. Bd. of Educ. of Tenaflly, 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. The petitioner has the burden of proof in a determination of residency eligibility. N.J.S.A. 18A:38-1(b)(2). When a child is found to be ineligible to attend a school in its district, a school board is entitled to recover tuition from the parent or guardian of the child found ineligible to attend within the district. N.J.S.A. 18A:38-1(b)(2).

A review of the record and undisputed facts reveals that A.D., J.D., K.D., J.D., and K.D. were not domiciled within the District while attending school in the District from November 17, 2023 through April 21, 2024, which constitutes ninety-four school days.

Based on the foregoing, I **CONCLUDE** that the respondent is entitled to tuition reimbursement from petitioner for the cost of providing an education to A.D., J.D., K.D., J.D., and K.D. for the ninety-four days in which the five children resided outside of the school district. I **FURTHER CONCLUDE** that the tuition reimbursement for all five children from November 17, 2023 through April 21, 2024, totals \$49,063.30 based on the daily per pupil tuition rate of \$104.39 for the 2023-2024 school year.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that the petitioner reimburse the respondent for the cost of tuition for A.D., J.D., K.D., J.D., and K.D. for ninety-four school days from November 17, 2023 through April 21, 2024, in the total amount of \$49,063.30.

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.



December 3, 2024

DATE

REBECCA C. LAFFERTY, ALJ

Date Received at Agency:

Date Mailed to Parties:

RCL/tat

APPENDIX

WITNESSES

For petitioner

None

For respondent

Paul Sorrentino, Principal, Magnolia Public School District

EXHIBITS

For petitioner

None

For respondent

R-1 Notice of Motion for Summary Decision; Respondent's Statement of Material Facts in Support of Motion for Summary Decision; Respondent's Brief in Support of Motion for Summary Decision; and Certification of Paul Sorrentino on Behalf of Respondent/Cross-Petitioner with attached Exhibits A – E (via cover letter dated March 13, 2024)

R-2 Certification #2 of Paul Sorrentino, Principal, on behalf of Respondent/Cross-Petitioner

Judge's Exhibits

C-1 Initial Decision, OAL Docket No. EDU 01560-2024

C-2 Commissioner's Decision, OAL Docket No. EDU 01560-2024