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OAL Dkt. No. 12278-24 (12774-23 on remand)

Agency Dkt. No. 288-10/23

New Jersey Commissioner of Education

Final Decision

A.T., on behalf of minor child, L.B.,

Petitioner,

v.

Board of Education of the City of Burlington,
Burlington 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.

The Commissioner previously concluded that petitioner failed to sustain her burden of establishing that her grandchild, L.B., was entitled to attend school in Burlington as an “affidavit student” pursuant to *N.J.S.A. 18A:38-1*. *A.T., on behalf of minor child, L.B. v. Bd. of Educ. of the City of Burlington, Burlington Co.*, Commissioner Decision No. 224-24R (June 10, 2024). However, because the record lacked information regarding the number of days of ineligible attendance by L.B., the Commissioner was unable to assess tuition pursuant to *N.J.S.A. 18A:38-1b*. Accordingly, the Commissioner remanded the matter to the OAL.

On remand, the ALJ gave petitioner two opportunities to appear for status conferences, but she failed to do so. The Burlington Board of Education (Board) submitted a certification regarding the number of days of ineligible attendance, but petitioner did not submit any

documentation, although she was given the opportunity to do so. Based on the Board's submission, the Administrative Law Judge (ALJ) found that L.B. was enrolled in the Board's schools for 162 days during the 2023-2024 school year. The ALJ also found that the cost of tuition for the 2023-2024 school year was \$108.16 per day.¹ The ALJ concluded that petitioner owed the Board tuition in the amount of \$17,521.92.

Upon review, the Commissioner concurs with the ALJ's findings and conclusions, for the reasons stated in the Initial Decision.

Accordingly, the Initial Decision on remand is adopted. Petitioner shall pay the Board \$49,585.25 for L.B.'s tuition costs incurred during the 2023-2024 school year.

IT IS SO ORDERED.²


COMMISSIONER OF EDUCATION

Date of Decision: March 17, 2025
Date of Mailing: March 19, 2025

¹ The Initial Decision contains a typographical error indicating that the annual tuition rate is \$19,268. The certification of the district's superintendent indicates that the annual tuition rate is \$19,468. When divided by 180 school days, the annual tuition of \$19,468 equals \$108.16 per day.

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 12278-24

AGENCY DKT. NO. 288-10/23

(ON REMAND EDU 12774-23)

A.T. ON BEHALF OF MINOR CHILD L.B.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
BURLINGTON, BURLINGTON COUNTY,**

Respondent.

A.T., petitioner, pro se

Alicia D’Anella, Esq., for respondent (Gorman D’Anella & Morlok, LLC, attorneys)

Record Closed: December 18, 2024

Decided: January 31, 2025

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

Petitioner A.T. on behalf of minor child L.B. challenges the residency determination by respondent Board of Education of the City of Burlington (Board). Under N.J.S.A. 18A:38-1(a), public schools shall be free to a minor who is domiciled within the school

district. The Board determined that “family hardship” was not demonstrated. The Board also seeks reimbursement for the period of ineligibility that L.B. attended school in the district.

PROCEDURAL HISTORY

On September 28, 2023, the respondent notified A.T. that L.B. was not entitled to a free education in the City of Burlington Public School District (District) because “family hardship” was not demonstrated. On October 18, 2023, A.T. appealed the Board’s decision. On November 13, 2023, the respondent filed an answer and a notice of motion for summary decision.

On November 16, 2023, the Department of Education, Office of Controversies and Disputes, transmitted the case to the Office of Administrative Law (OAL), where it was filed under OAL docket number EDU 12774-23 as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing.

On December 5, 2023, I was assigned this case for a hearing. On January 9, 2024, the matter was scheduled for a pre-hearing conference. The petitioner failed to appear. The matter was rescheduled to January 29, 2024. At that time a status conference was held and a motion schedule was set for the response to respondent’s motion. The petitioner had until February 29, 2024, to respond, and respondent’s reply was due on March 7, 2024. There was no response from the petitioner. On March 27, 2024, an email was sent regarding the responses that were due. Again, no response was received from the petitioner. The record closed on March 27, 2024.

An Initial Decision was issued by the undersigned on May 8, 2024. (C-1.) On June 10, 2024, the Commissioner issued a decision remanding the case to the OAL for additional fact-finding, and the remanded matter was filed at the OAL on September 6, 2024, under OAL docket number EDU 12278-24. (C-2.) Status conferences were scheduled on October 10, 2024, and November 19, 2024, and no one appeared. The OAL contacted the attorney for respondent, who had moved to another firm. On

December 3, 2024, a status conference was held, but the petitioner failed to appear. A scheduling order was made for the submission of briefs, of which the petitioner was notified. Upon receipt of the respondent's brief, the record closed on December 18, 2024. There has been no response from the petitioner at the date of this writing.

ISSUES PRESENTED ON REMAND

The remand decision presents the following issues for adjudication:

1. The determination of the number of days of L.B.'s ineligible attendance.
2. Calculation of the amount owed to the Board.

FINDINGS OF FACT

The factual findings of the Initial Decision in EDU 12774-23 are incorporated herein by reference. The respondent's submission and the certification of superintendent Dr. John Russell (nothing was received from the petitioner) reveal the following additional uncontroverted facts, and I therefore **FIND**:

1. L.B. began attending the District on October 2, 2023. (Russell's Cert. at ¶ 5.)
2. L.B. was enrolled throughout the 2023–2024 school year. (Ibid.)
3. L.B. was enrolled for 162 school days during the 2023–2024 school year. (Ibid.)
4. The District's tuition rate for a student in grades 6–8 annually is \$19,268. (Russell's Cert. at ¶ 6.)
5. When the annual cost of \$19,268 is divided by the number of school days, which is 180, it equals \$108.16 per day. (Ibid.)

6. The tuition rate for the 2023–2024 school year was approved by the Board of Education on May 1, 2024. (R-A.)
7. A.T. owes the district tuition in the amount of \$17,521.92 (162 x \$108.16). (Russell’s Cert. at ¶ 8.)

CONCLUSIONS OF LAW

A party may move for summary decision upon any or all of the substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. “The decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b).

In this case, no genuine issue of any material fact exists, and the Board is entitled to prevail as a matter of law for the reasons stated below.

Public school shall be free to a minor who is domiciled within the school district, N.J.S.A. 18A:38-1(a); New Jersey has consistently held that the domicile of the child follows the domicile of the parent, Shim v. Rutgers, 191 N.J. 374, 399 (2007); and if a student does not have a right to attend the school district, the commissioner of the Department of Education may assess tuition. N.J.A.C. 6A:22-6.2. The resident has the burden of proof in a determination of residency ineligibility. N.J.S.A. 18A:38-1.

In this case, L.B. is domiciled in Edgewater, NJ, with her mother, A.M. Because of “bullying” she was experiencing at the school in Edgewater, the family sought to enroll L.B. in the District as an “affidavit student.” As part of the “Application for Admission,” completed by the legal parent, there is an “explanation of hardship” requirement that the parent/guardian must complete.

N.J.S.A. 18A:38-1 provides, in pertinent part:

Any person who is kept in the home of another person domiciled within the school district and is supported by such other person gratis as if he were such other person's own child, upon filing by such other person with the secretary of the board of education of the district, if so required by the board, a sworn statement that he is domiciled within the district and is supporting the child gratis and will assume all personal obligations for the child relative to school requirements and that he intends so to keep and support the child gratuitously for a longer time than merely through the school term, and a copy of his lease if a tenant, or a sworn statement by his landlord acknowledging his tenancy if residing as a tenant without a written lease, and upon filing by the child's parent or guardian with the secretary of the board of education a sworn statement that he is not capable of supporting or providing care for the child due to a family or economic hardship and that the child is not residing with the resident of the district solely for the purpose of receiving a free public education within the district. The statement shall be accompanied by documentation to support the validity of the sworn statements, information from or about which shall be supplied only to the board and only to the extent that it directly pertains to the support or nonsupport of the child. If in the judgment of the board of education the evidence does not support the validity of the claim by the resident, the board may deny admission to the child.

Here, L.B.'s mother's explanation of hardship was, "[a]t her other school she was being bullied by a male student and [L.B.] didn't want to attend back and all family member[s] didn't want her to go back to that school do sic to her safety." (See Affidavit of Student, Part 2—Application for Admission.) This, the respondent argues, does not fit within the hardship criteria to be accepted as a student in the District. I agree. I **CONCLUDE** that there was no sworn statement that A.M. is not capable of supporting or providing care for L.B. due to a family or economic hardship pursuant to N.J.S.A. 18A:38-1. I further **CONCLUDE** that L.B. is residing with the resident of the District solely for the purpose of receiving a free public education.

Accordingly, I **CONCLUDE** that L.B. attended the school district for 162 days, which she was ineligible to attend. I further **CONCLUDE** that A.T. owes the respondent

\$108.16 per day for a total of \$17,521.92 for the period of ineligibility that L.B. attended the City of Burlington public schools pursuant to N.J.S.A. 18A:38-1(b)(1) and N.J.A.C. 6A:22-6.2.

ORDER

It is **ORDERED** that the petition is **DENIED** based upon petitioner's failure to meet her burden of proof that the District acted arbitrarily or capriciously in disputing L.B.'s entitlement to a free education in the City of Burlington Public School District.

It is further **ORDERED** that the Board of Education of the City of Burlington is entitled to tuition reimbursement from petitioner in the amount of \$17,521.92 for the 162 days L.B. attended while ineligible.

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**. 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.

January 31, 2025

DATE



JOAN M. BURKE, ALJ

Date Received at Agency:

Date Mailed to Parties:

JMB/sb/jm

APPENDIX

Exhibits

For Petitioner:

None

For Respondent:

Respondent's submission with the Certification of Dr. John Russell, Ed.D., along with Exhibits R-A and R-B

Judge's Exhibits:

- C-1 Initial Decision EDU 12774-23
- C-2 Commissioner's Decision EDU 12774-23