

New Jersey Commissioner of Education
Final Decision

N.J.-B., on behalf of minor child, I.T.,

Petitioner,

v.

Board of Education of the Township of Union,
Union County,

Respondent.

Synopsis

Pro Se petitioner appealed the determination of the respondent Board that her child was not domiciled in Union and therefore not legally entitled to a free public education in the Township of Union School District (District). Petitioner further appealed the tuition assessment levied upon her for the time her child was deemed ineligible to attend school in the District. The Board contended that petitioner was domiciled in Irvington, not Union, and sought reimbursement in the total amount of \$52,711.32, representing tuition for the entire 2018-2019 school year, including ninety-eight days of general education, eighty-two days of special education following the implementation of an IEP in the middle of the school year, transportation, behavioral intervention services, and counseling services.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a) and *N.J.A.C.* 6A:22-3.1(a), public schools are free to any person over five and under twenty-five years of age who is domiciled within the school district; I.T. was enrolled in the Board's schools for the entirety of the 2018-2019 school year; petitioner testified that she had resided in Union during the relevant time period and that in order to obtain her New Jersey driver's license bearing the Lafayette Avenue address, she had to provide proof of residence to the Motor Vehicle Commission; petitioner further testified that because of her work schedule and childcare needs, I.T. sometimes stayed with relatives in Irvington overnight. The ALJ concluded that, based on her unstable living situation during the 2018-2019 school year, petitioner was domiciled for a portion of the year in Irvington, and a portion of the year in Union; petitioner was notified by the Board that she would be liable for \$85 per day, or \$15,321 for the entire school year; and that petitioner's liability to the Board is limited to the amount for which she had notice. The ALJ ordered petitioner to pay tuition to the Board in the amount of \$8,341.76, representing the total amount of general education tuition claimed by the Board.

Upon review, the Commissioner concurred with the ALJ that the Board's ability to recover tuition from the petitioner is limited pursuant to *N.J.S.A.* 18A:38-1(b), which does not specify that assessed tuition be equal to the actual costs incurred by the district for educating a particular student; rather, it uses the measure of annual per pupil cost which is based on the district's overall costs and enrollment, and is not specific to any individual student. However, the Commissioner also found that the Initial Decision requires clarification regarding the exact amount of tuition owed to the District since the ALJ did not specify what portion of the school year petitioner resided in Union. Accordingly, the matter was remanded to the OAL for clarification of the precise time periods in which petitioner resided in Union and Irvington.

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.

April 24, 2020

New Jersey Commissioner of Education

Decision

N.J.-B, on behalf of minor child, I.T.,

Petitioner,

v.

Board of Education of the Township
of Union, Union County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by respondent pursuant to *N.J.A.C.* 1:1-18.4 have been reviewed.¹

In this matter, petitioner challenged the Board's determination that she did not reside in the Union school district. After a hearing, the ALJ found that – based on her unstable housing situation during the 2018-19 school year – petitioner was domiciled for a portion of the year in Irvington and a portion of the year in Union. The Board sought tuition in the amount of \$52,711.32, which included general education tuition, special education tuition, and related costs. The ALJ found that the notice sent to petitioner by the Board indicated that she would be liable for \$85 per day, or \$15,321 for the entire school year. The ALJ therefore concluded that petitioner's liability to the Board was limited to the amounts for which she had notice. The ALJ ordered petitioner to pay tuition to the Board in the amount of \$8,341.76, representing the total amount of general education tuition.

¹ Petitioner did not file exceptions or a reply to respondent's exceptions.

In its exceptions, the Board argues that the ALJ did not consider all of its evidence in rendering the final decision, indicating that its hearing binder was not listed as one of its exhibits in the Initial Decision. The Board also contends that neither petitioner nor her witnesses were credible and that the ALJ erred in finding that petitioner resided in both Union and Irvington during the 2018-19 school year. Finally, the Board argues that there is no notice requirement for the amount of tuition due for a period of ineligible attendance and that costs can change during the pendency of a residency matter.

Upon review, the Commissioner concurs with the ALJ's conclusion that the Board's ability to recover tuition from petitioner is limited. *N.J.S.A.* 18A:38-1(b) provides that if a parent loses a residency appeal, the Commissioner shall assess 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." The statute does not specify that the assessed tuition be equal to the actual costs incurred by the district for educating the student at issue. Instead, it uses the measure of annual per pupil cost, which is based on the district's overall costs and enrollment and is not specific to any individual student. Here, the annual per pupil cost to Union was \$15,321. The Board's recovery is therefore limited to 1/180 of that amount for each day of ineligible attendance, or \$85.12 per day.

While concurring with the ALJ's primary finding in this matter, the Commissioner additionally determines that the Initial Decision requires clarification regarding the exact amount of tuition due to the school district. Specifically, while the ALJ found that petitioner resided in Union for a "portion of the year," the Initial Decision does not specify *which* portion of the school year.²

² The Board sought tuition at the general education rate for 98 days and at the special education rate for 82 days. The ALJ, in focusing on the Board's inability to recover special education costs, appears to have simply accepted the total general education tuition claimed by the Board and rejected the special education tuition and related costs. However, in order to properly calculate the amount due from petitioner, the Commissioner requires a finding of fact regarding the number of days of ineligible attendance. While the "portion of the year" in which the student was ineligible to attend may equal the same 98 days that the student was a general education student, the ALJ did not make such a factual finding.

Accordingly, the matter is remanded for clarification of the precise time periods in which petitioner resided in Union and Irvington.³

Accordingly, this matter is remanded to the OAL for further proceedings consistent with this opinion.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: 4/24/20

Date of Mailing: 4/27/20

³ Additionally, the Commissioner remands this matter to allow the ALJ to clarify the exhibits considered in rendering the Initial Decision, including addressing the issue of the Board's hearing binder.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 03247-19
AGENCY DKT. NO. 23-1/19

N.J.-B., ON BEHALF OF MINOR CHILD, I.T.,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWNSHIP

OF UNION, UNION COUNTY,

Respondent.

N.J.-B., petitioner pro se, on behalf of I.T.

Afshan T. Ajmiri Giner, Esq., for respondent (Florio Perucci Steinhart & Cappelli, attorneys)

Record Closed: January 17, 2020

Decided: February 11, 2020

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE

Respondent Board of Education of the Township of Union (the Board) seeks reimbursement of tuition and associated costs from petitioner, N.J.-B., parent of minor

child I.T., in the amount of \$52,711.32. This amount represents tuition for the entire 2018-2019 school year, including ninety-eight days of general education, eighty-two days of special education (an IEP was implemented in the middle of the school year), transportation, behavioral intervention services, and counselling services. The Board asserts that petitioner and her children were not domiciled within the School District at any point during the period in question.

PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law (OAL) on March 6, 2019, for hearing as a contested case. An in-person settlement conference was conducted on July 31, 2019. The parties failed to reach an amicable resolution and the matter was set down for a hearing on October 29, 2019. The hearing was conducted, and the final submissions were received from the Board on December 3, 2019, and from the petitioner on December 30, 2019. A Certification signed by the business administrator for the district was received via regular mail on January 17, 2020, at which point the record was closed.

ISSUE

The issue in this matter is whether minor child I.T. is eligible to attend Union's public schools free of charge in accordance with N.J.S.A. 18A:38-1 and, if not, whether respondent's request for tuition reimbursement should be granted.

SUMMARY OF TESTIMONY

R.L.

R.L. testified that the two minor children spent "a lot of time" at her home even after they moved to Union. She stated R.L. is the sister of petitioner, N.J.-B. She resides at xx Headley Terrace, Irvington. R.L. testified that petitioner came to live with her for approximately one month from July to August of 2018, after which petitioner went with her two minor children to live with their brother (Mr. R.J.-B.) at his home in Union. R.L.

further testified that petitioner had an older, adult-male son that had already been living with her for some time. R.L. stated that she rents a two-bedroom apartment and that the quarters were too small to accommodate petitioner, her two minor children, her adult son, plus R.L. and her family.

R.L. testified that the two minor children spent “a lot of time” at her home even after they moved to Union. She stated that the two minor children would sleep over her house from time to time, but she could not testify as to the frequency of the sleepovers.

N.J.-B.

N.J.-B. is the petitioner in the foregoing matter, and she testified on her own behalf. She testified that during the time period in question, she held two full-time jobs; one from 5:15 a.m. to 2:00 p.m. and another from 3:00 p.m. to 11:00 p.m. Due to these long working hours, she relied on help from her family to care for her minor children, including I.T. At times, I.T. would be at his aunt’s house in Irvington and would already be asleep by the time N.J.-B. was done with work. N.J.-B. testified that instead of waking I.T. up and transporting him to Union, I.T. would spend the night in Irvington and she would sleep in Union and retrieve him from Irvington in the morning.

On cross-examination, N.J.-B. testified that a bus was provided by the district at some point during the 2018-2019 school year, but she could not state with specificity exactly when the bus was provided or the dates, if any, said bus service was utilized by I.T. She did note that at times, she would take I.T. to and from school and sometimes her brother would accompany the child to school.

Petitioner presented a driver’s license issued by the New Jersey Motor Vehicle Commission on November 9, 2018, which reflected her address as xxx Lafayette Avenue, Union, N.J. See P-1. Same was admitted into evidence. N.J.-B. further testified that she no longer resides in Union and her son, I.T., has not been enrolled in the Union School District since June of 2019.

Mr. R.J.-B.

Mr. R.J.-B. is the brother of the petitioner and the owner of xxx Lafayette Avenue, Union, N.J., where he resides with his family. Mr. R.J.-B. testified that his sister and her two young children came to live with him for a period of approximately one year, starting in August of 2018. He further testified that at times, petitioner and I.T. would not sleep at his home but would spend the night at his sister's house in Irvington. He could not approximate how frequently this would occur but noted that this would happen from time to time due to petitioner's work schedule.

On cross examination, Mr. R.J.-B. testified that his sister had received mail at his home during the period in question and continues to receive mail at the Union address from time to time even though she has since moved to West Orange.

John Matos

John Matos (Matos) appeared telephonically. He is a residency investigator for the Union Township Board of Education. He has been so employed by the district since January 22, 2015. Matos conducted an investigation during the 2018-2019 school year and compiled a report regarding the residence of I.T. See R-1. Mr. Matos testified that he commenced his investigation from October 9, 2018, to October 23, 2018, with a follow-up investigation from November 5, 2018, through the November 30, 2018. Matos began his investigation by surveilling I.T.'s purported Union Township address on Lafayette Avenue, Union. He testified that on the morning of on the morning of October 9, 2018, he witnessed several children exiting the subject address, but not I.T.

Matos subsequently conducted an afternoon surveillance on October 15, 2018, wherein he followed I.T. home after I.T. was dismissed from school early due to a disciplinary infraction. Matos testified that he was contacted by the Board and notified that I.T. would be leaving school early that day. Matos further testified that he observed I.T. leaving the school accompanied by his mother (the petitioner). Matos followed them

to xx Headley Terrace, Irvington. Matos testified that he remained at the Irvington address briefly to conclude his surveillance and returned early the next morning to observe. He witnessed I.T. leaving the premises along with his mother early the next morning. The pair proceeded to drive to the child's school in Union.

Matos testified that he performed a follow-up investigation later in the year, from June 6, 2018, to June 21, 2018, (with exception of June 17, 2018). He noted that at this time, I.T. had changed schools from Connecticut Farms School to Battle Hill Elementary School.

Matos testified that he had performed surveillance on I.T. for a total of eight weeks, excluding weekends, between October of 2018 and June of 2019. His report did not indicate, and Matos, himself, could not attest, to his specific observations for each day he performed surveillance on petitioner and I.T. Matos could only attest with specificity to the October 9, 2018, and October 15, 2018, dates. Matos did attest, however, that at all times relevant, he witnessed I.T. exiting and returning to xx Headily Terrace, Irvington and never witnessed the child exit or return to xxx Lafayette Avenue, Union. Matos further testified that he observed N.J.-B.'s vehicle, a black Acura, regularly parked outside the Irvington address, often overnight, and never observed the vehicle parked overnight at the Union address.

FINDINGS OF FACT

Having had an opportunity to consider all the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following **FACTS** in this case:

1. Petitioner and her minor child, I.T., came to live at her sister's residence located at xx Headley Terrace, Irvington in July of 2018.

2. I.T. enrolled as a pupil in the Township of Union School District in September of 2018, where he remained throughout the 2018-2019 academic year (the time period reimbursement is sought.)

3. A letter dated October 31, 2018, was sent to N.J.-B. by the district informing N.J.-B. that she was found to be residing out of district and her child, I.T., was therefore not entitled to a free education in the district. The letter further informed N.J.-B. that she may be responsible for tuition of \$85 per day, or up to \$15,321 per year if, on appeal, she was found to be residing out of district while I.T. was enrolled as a pupil in the Union School District. See R-2.

4. An investigation was conducted by investigator John Matos regarding the residence of I.T. during the 2018-2019 school year. Mr. Matos surveilled I.T.'s purported Union Township address of xxx Lafayette Avenue, Union and conducted surveillance at xx Headley Terrace, Irvington.

5. Matos performed surveillance on I.T. and N.J.-B. between October of 2018 and November of 2018, after which Matos concluded that I.T. was, at all times relevant, living at xx Headily Terrace, Irvington and not xxx Lafayette Avenue, Union.

6. As of November 9, 2018, N.J.-B. held, and continues to hold, a New Jersey driver's license that shows her address as being xxx Lafayette Avenue, Union. P-1.

7. I.T. has not been enrolled in the Union School District since on or about July 1, 2019.

8. I **FIND** that petitioner, N.J.-B., had an unstable housing situation from July of 2018 to June of 2019 and, as a result, both petitioner and her son, I.T., spent substantial time at xx Headily Terrace, Irvington and xxx Lafayette Avenue, Union.

LEGAL DISCUSSION

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 parents 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.

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. ex rel. minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001).

Where a 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 as follows:

The parent or guardian may contest the Board’s decision before the Commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the Commissioner and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this section.

Petitioner has the burden of proof in a determination of residency ineligibility N.J.S.A. 18A:38-1. Here petitioner disputes the ultimate finding of the district and the corresponding investigative report that concludes that for a substantial time during the 2018-2019 school year, both N.J.-B. and I.T. were occupying the residence located at xx

Headily Terrace, Irvington and that I.T. was regularly taken to the school from this out-of-district address.

Notwithstanding the above-cited investigation, N.J.-B. was able to produce a valid New Jersey State motor vehicle license that showed her address to be xxx Lafayette Avenue, Union. She also testified that she did, in fact, reside at that Union address at all times relevant and that in order to obtain the license, she had to provide proof of residence to the Motor Vehicle Commission. In addition, N.J.-B. produced two additional witnesses that testified that N.J.-B. was living with her son, I.T., at the Union address at all times relevant. In light of the above, I **CONCLUDE** that, based on her unstable housing situation during the 2018-2019 school year, petitioner N.J.-B. was domiciled for a portion of the school year at xx Headily Terrace, Irvington and a portion of the school year at xxx Lafayette Terrace, Union.

DAMAGES

Where the evidence does not support the claims of the resident, the Commissioner of Education is authorized to assess tuition pursuant to N.J.A.C. 6A:22-6.2(a), which provides as follows:

If in the judgment 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.

N.J.S.A. 18A:38-1(b) likewise requires that tuition be calculated on the basis of 1/180 of the total annual per pupil cost to the district multiplied by the number of days of ineligible attendance.

In the case at bar, the district is seeking an order against the petitioner assessing the tuition amount owed the district in the amount of \$52,711.32. No testimony was offered at the hearing regarding this amount, but the Board provided the undersigned with a certification (R-3) itemizing the amount sought in their closing submissions. Based on the certification, the amount sought consists of general education tuition of \$8,341.76 (prorated for ninety-eight days); special education tuition of \$10,706.92 (prorated for eighty-two days); personal aid costs (including benefits) of \$26,445.69 (prorated for eighty-two days); door-to-door transportation of \$929.65 (estimated); behavioral intervention services of \$6,050; and counseling services in the amount of \$237.30.

In the notice sent to N.J.-B. by the district dated October 31, 2018, (R-2) it is clearly indicated that the amount petitioner would be liable for if she were found not to be domiciled in district, would be \$85 per day or \$15,321 for the entire school year. The notice makes no reference to special education tuition, related costs, or transportation expenses. At the hearing, no testimony was offered with regard to special education tuition/costs or transportation costs. Thus, I **FIND** petitioner had no notice of any charges or costs beyond the \$85 per day and I, therefore, **CONCLUDE** that petitioner's liability for the 2018-2019 school year is limited to the \$15,321 sought via the district's October 31, 2018, letter. R-2. In addition, since I have already found that petitioner was domiciled for a portion of the year in the district, I **CONCLUDE** that petitioner's liability to the district is limited to the amount of \$8,341.76; which represents the total amount of general education tuition (pro-rated at \$85 per day) certified to by the Business Administrator. R-3. Therefore, the Board is entitled to payment of tuition in the amount of \$8,341.76 for the entire 2018-2019 school year.

Based upon the facts adduced and the legal principles cited above, I **CONCLUDE** that petitioner's child, I.T., was not a domiciliary in the Union Township Board of Education

School District for a portion of the days sought and that respondent is entitled to reimbursement for the costs of audited tuition in the amount of \$8,341.76.

DECISION AND ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's determination that petitioner and her child are not residents and domiciliary in Union, New Jersey, and were not domiciled within its school district during the 2008-2009 school year is hereby **AFFIRMED in part**. It is further **ORDERED** that respondent is entitled to reimbursement from petitioner for the total cost of audited tuition in the amount of \$8,341.76.

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 of which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATT: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. 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.

February 11, 2020

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

2/11/20

Date Mailed to Parties:

ld

APPENDIX

LIST OF WITNESSES

For petitioner:

R.L.

N.J.-B.

R.J.-B.

For Respondent:

John Matos

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

P-1 New Jersey Driver's License for N.J.-B.

For Respondent:

R-1 Investigation report by John Matos

R-2 Letter dated October 31, 2018, from Board to petitioner

R-3 District's Certification