

**New Jersey Commissioner of Education**  
**Final Decision**

<p>R.P. on behalf of minor children, V.P.,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="padding-left: 40px;">v.</p> <p>Board of Education of the Hunterdon Central Regional High School District, Hunterdon, County,</p> <p style="padding-left: 40px;">Respondent.</p>
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**Synopsis**

Petitioner appealed the respondent Board’s determination that his daughter, V.P., was not legally entitled to a free public education in the Hunterdon Central Regional High School District (District) during the 2018-19 and 2019-20 school years. Petitioner argued that he had made good faith efforts to establish a domicile within the District’s resident area, but that several attempts to buy or lease a house in the school district had all fallen through. The Board sought tuition reimbursement for the period of V.P.’s ineligible attendance. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; pursuant to *N.J.S.A.* 18A:38-1(a), public schools are free to any person over five and under twenty years of age who is domiciled within the school district; petitioner has the burden of proof by a preponderance of the evidence to prove that he is domiciled in the school district. *N.J.S.A.* 18A:38-1(b)(2); the record reflects petitioner’s intent to reside within the District’s area of attendance, yet it is clear that – to date – the family has never actually lived there; instead, at all relevant times, the family has resided in an extended stay hotel in Branchburg, outside of the District’s area of attendance. The ALJ concluded that petitioner failed to sustain his burden of proof to show that V.P. was entitled to a free public education in the District during the 2018-19 and 2019-20 school years. Accordingly, the ALJ ordered tuition reimbursement in the amount of \$26,699.85, plus \$112.49 for each day beyond December 16, 2019 that V.P. remained enrolled in the District.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and – finding petitioner’s exceptions to be unpersuasive – adopted the Initial Decision of the OAL as the final decision in this matter. The petitioner was ordered to reimburse the District for tuition costs in the amount of \$26,688.85, plus \$112.49 per day for each day beyond December 16, 2019 that V.P. remained enrolled in the District. The petition was dismissed.

<p>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.</p>
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August 27, 2020

188-20

OAL Dkt. No. EDU 12353-19

Agency Dkt. No. 63-3/19

**New Jersey Commissioner of Education**

**Final Decision**

R.P., on behalf of minor child, V.P.,

Petitioner,

v.

Board of Education of the Hunterdon Central  
Regional High School District, Hunterdon,  
County,

Respondent.

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

In this matter, petitioner is challenging the Board's determination that his minor child was ineligible to attend school in the Hunterdon Central Regional High School District (District). The Administrative Law Judge (ALJ) found that petitioner did not meet his burden of demonstrating that he was a resident of the District's attendance area during the 2018-19 and 2019-20 school years. Despite several attempts by petitioner to move into the District, his family has never lived within the District's attendance area. Accordingly, the ALJ ordered tuition reimbursement in the amount of \$26,699.85, plus \$112.49 for each day beyond December 16, 2019 that the minor child remained enrolled in the District.

In his exceptions, petitioner argues that *N.J.A.C.* 6A:22-6.3(b) permits the Board or Commissioner to make an equitable determination with respect to tuition and the ALJ failed to address why equity does not apply to petitioner’s circumstances. According to petitioner, he was in “constant contact” with the school about setbacks regarding his intended move into the attendance area – specifically, that agreements to lease or buy three homes fell through – and he should therefore not have to pay tuition. (Petitioner’s Exceptions at 5). Petitioner also contends that the ALJ overlooked the fact that the Board failed to inform him that the District was a choice school. Petitioner maintains that the Board has an affirmative duty to guide students with respect to applying to the choice program, and if it had done so, V.P. could have been enrolled in the District as a choice student. Pursuant to *N.J.A.C.* 18A:36B-21b and *N.J.A.C.* 6A:12-1.2(c), districts who participate in the choice program cannot also enroll students on a tuition basis. As such, petitioner argues that the Board is legally prohibited from requesting tuition in this case. Petitioner distinguishes this matter from *T.F., on behalf of minor child, T.N. v. Board of Education of the City of Ocean City, Cape May County*, EDU 10336-16, Initial Decision (March 16, 2017), *adopted*, Commissioner’s Decision No. 122-17, decided April 28, 2017, which was cited by the ALJ. Petitioner explains that the facts here are different from *T.F.*, in which the petitioner was assessed tuition after being rejected from the choice program, only to then enroll her daughter in the district using a false address. Finally, petitioner claims that the ALJ erred in refusing to permit oral argument in this matter. Accordingly, petitioner requests that the Initial Decision and any assessment of tuition be rejected.

In reply, the Board argues that petitioner’s unfortunate trouble securing housing within the District is not an equitable consideration. Additionally, the Board contends that petitioner is not entitled to automatically be enrolled as a choice student; there is an established

application and selection process with a fixed number of seats, and petitioner has not submitted an application. Finally, contrary to petitioner's arguments, the Board maintains that it is not operating a tuition program in violation of *N.J.A.C.* 18A:36B-21b and *N.J.A.C.* 6A:12-1.2(c), but rather is asserting its right to seek an assessment of tuition under *N.J.A.C.* 18A:38-1b based on V.P.'s ineligible attendance. Accordingly, the Board urges the Commissioner to adopt the Initial Decision, including the assessment of tuition.

Upon review, the Commissioner concurs with the ALJ's finding that petitioner failed to sustain his burden of establishing that he was domiciled in the District's attendance area during the 2018-19 and 2019-20 school years as it is established that he never resided within the District. The Commissioner further concurs with the ALJ's conclusion that the minor child was, therefore, not entitled to a free public education in the District's schools during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the period during which the minor child was ineligible to attend school in the District. Therefore, the Board is entitled to tuition reimbursement in the amount of \$26,688.85 (\$19,377 for the entire 2018-19 school year and \$7,311.85 for the first 65 days of the 2019-20 school year) plus \$112.49 per day for each day beyond December 16, 2019 that the minor child remains enrolled in the District.

The Commissioner does not find petitioner's exceptions to be persuasive. While it seems that petitioner intended to move into the District's attendance area and suffered several frustrating setbacks in his attempts to purchase or rent a home, he never lived within the District. The fact that petitioner kept the Board informed of his efforts does not entitle him to a free public education in the District's schools. Additionally, the Board was not required to enroll V.P. in the choice program, as there is an application and selection process. Furthermore, while a district's

participation in the choice program prohibits it from simultaneously running a tuition program, it is not prohibited from seeking tuition reimbursement from students who are ineligibly enrolled in the district. There is no evidence here that the Board was admitting students on a tuition basis; it simply assessed tuition for the period of V.P.'s ineligible attendance, in accordance with *N.J.S.A.* 18A:38-1b. Petitioner's attempt to distinguish the facts of *T.F.*, *supra*, falls flat. The ALJ cited the case to demonstrate that the Commissioner has previously assessed tuition in a choice district, so the specific facts of the case are irrelevant. Finally, according to *N.J.A.C.* 1:1-12.2(d), written motions – as the parties filed here – shall be decided on the papers unless oral argument is directed by the judge. As such, it was within the ALJ's discretion to decide the written motion without oral argument.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$26,688.85, plus \$112.49 per day for each day beyond December 16, 2019 that the minor child remains enrolled in the District, for tuition costs incurred during the period in which V.P. was ineligible to attend school in the Hunterdon Central Regional High School District. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>1</sup>

INTERIM COMMISSIONER OF EDUCATION

Date of Decision: August 27, 2020  
Date of Mailing: August 31, 2020

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1).



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**GRANTING SUMMARY DECISION**

OAL DKT. NO. EDU 12353-19

AGENCY DKT. NO. 63-3/19

**R.P., on behalf of minor child, V.P.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE  
HUNTERDON CENTRAL REGIONAL  
HIGH SCHOOL DISTRICT,  
HUNTERDON COUNTY,**

Respondent.

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**Steven D. Farsiou, Esq.,** for petitioner (Trinity & Farsiou, LLC, attorneys)

**Alicia D’Anella, Esq.,** for respondent (Comegno Law Group, P.C., attorneys)

Record closed: July 13, 2020

Decided: July 13, 2020

BEFORE **JOSEPH ASCIONE, ALJ:**

BEFORE **JOSEPH ASCIONE, ALJ:**

**STATEMENT OF THE CASE**

Petitioner, R.P., challenges the residency determination made by the Hunterdon Central Regional High School District Board of Education (“Board”) about his minor daughter, V.P. On April 15, 2019, respondent submitted an Answer, which was filed with the Commissioner of Education on the same day. Respondent’s demand included a request that the Commissioner find V.P. ineligible to attend Hunterdon Central Regional High School District (“District” or “HCRHS”) and that the petitioner be assessed a tuition charge for each day of V.P.’s ineligible attendance in the Board’s schools for the 2018-2019 school year and for any future school years pending the completion or withdrawal of the appeal. The matter was transmitted to the Office of Administrative Law where it was filed as a contested case on April 17, 2019. N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to -13. An undiscovered error delayed docketing of the matter until September 9, 2019.

Respondent filed a Motion for Summary Decision on December 16, 2019. Petitioner filed Opposition to the Motion and a Cross-Motion for Summary Decision on January 3, 2020. Respondent filed a Brief in Support of its Motion for Summary Decision and in Opposition to Petitioner’s Motion for Summary Decision on January 13, 2020.

### **FACTUAL DISCUSSION**

Petitioner, R.P., is the father of V.P. Prior to the 2018-2019 school year, V.P. attended public school in Metuchen, New Jersey. Petitioner and his family determined to relocate to Raritan Township with the intention of having V.P. attend HCRHS.

On or about June 4, 2018, Petitioner signed a lease agreement for a property located on Altamont Drive in Flemington, New Jersey, which is within District’s attendance area. Thereafter, on or about July 24, 2018, Petitioner submitted to District an enrollment application on behalf of V.P. In support of V.P.’s application for enrollment, R.P. submitted a copy of the lease agreement for the Altamont property. At that time, District issued to R.P. a written “Notice of Defect in Application – Potential Ineligibility.” The document notified R.P. that, although V.P. was being accepted for enrollment on a

preliminary basis, he was required to submit additional proofs of his residency at the Altamont property by August 24, 2018.

Petitioner never moved into the Altamont property, as the lease fell through when the property owner apparently signed two contracts for the same property. Over a period of months, Petitioner made various other attempts to obtain housing within the District's attendance area, but these attempts were similarly unsuccessful.

No additional proofs of residency within the District's attendance area were submitted and, on this basis, respondent determined V.P. was ineligible to attend school in the District. Respondent asserts that on February 5, 2019, Petitioner was hand-delivered a letter notifying him of the determination of ineligibility and Petitioner's opportunity to appear before the Board of Education on February 25, 2019. Petitioner failed to appear before the Board of Education on February 25 and an email was sent to Petitioner on February 26 advising that V.P. was deemed ineligible to attend Hunterdon Central Regional High School because V.P. did not live in-district. Petitioner alleges that he did not receive the email until March 21, 2019. Petitioner filed an appeal on March 22, 2019.

At all relevant times, Petitioner has lived at an extended-stay hotel located in Branchburg, which is outside of the District's attendance area. As of the close of the record on this motion, Petitioner has yet to relocate to a home within the District's attendance area.<sup>2</sup>

The District's daily tuition rate for the 2018-2019 school year was \$107.65 per day. The District's daily tuition rate for the 2019-2020 school year is \$112.49 per day. The District participates in the Interdistrict Public School Choice Program.

### **LEGAL DISCUSSION**

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<sup>2</sup> Petitioner certifies that the family has entered into a contract to build a new home that is within the District's attendance area. However, it is undisputed that closing has not yet occurred and the family has not yet moved into the property.



A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . , are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

### **Whether V.P. is entitled to attend the District schools as a domiciliary**

In the present matter, R.P. does not dispute that, to date, his family has never lived within District’s attendance area. Thus, there are no genuine issues of material fact. The question is whether the Board is entitled to summary decision as a matter of law.

Public schools shall be free to students over five and under 20 years of age if they are domiciled within the school district. N.J.S.A. 18A:38-1(a). However, a district board of education may order the transfer or removal of a child from school if the board of education has determined that the parent or guardian of a child who is attending the schools of the district is not domiciled within the district. N.J.S.A. 18A:38-1(b)(2). To that end, “[i]f the superintendent or administrative principal of a school district finds that the parent or guardian of a child who is attending the schools of the district is not domiciled

within the district . . . , the superintendent or administrative principal may apply to the board of education for the removal of the child.” N.J.S.A. 18A:38-1(b)(2). The parents may contest a local school board’s decision regarding the student’s right to attend school in the district to the Commissioner of Education and “shall have the burden of proof by a preponderance of the evidence” to prove domicile in the school district. N.J.S.A. 18A:38-1(b)(2).

If an appeal is filed, and the petitioner fails to 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 prior to the appeal’s filing and including the 21-day period to file an appeal. N.J.A.C. 6A:22-6.2(a). Such tuition assessment “shall be calculated on a per student basis for the period of a student’s ineligible enrollment, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23-3.1. The individual student’s record of daily attendance shall not impact on such calculation.” N.J.A.C. 6A:22-6.3(a). However, “[n]othing in this chapter shall preclude an equitable determination, by the district board of education or the Commissioner, that, when the circumstances of a matter so warrant, tuition shall not be assessed for all or part of any period of a student’s ineligible attendance in the school district.” N.J.A.C.6A:22-6.3(b).

A child’s domicile is normally that of his or her parents. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000), aff’d, 167 N.J. 55 (2001). The domicile of a person is the place where he has his true, fixed permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning, and from which he has no present intention of moving. In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), aff’d, 311 N.J. Super. 589 (App. Div.), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051 (1999). A person’s domicile continues until superseded by a new domicile. Id. at 377.

In considering whether a change of domicile has occurred, three elements must be considered: 1) whether there had been an actual and physical taking up of an abode; 2) whether the subject had an intention to make his home there permanently or at least indefinitely; and 3) whether the subject had an intention to abandon his old domicile. Unanue, 255 N.J. Super at 376 (citations omitted). Thus, although a person's intent with respect to domicile is very important, it is not alone sufficient. Rather, a concurrence of physical presence and an intention to make that place one's home is required. Ibid.

Here, the record reflects a strong intention to reside within District's area of attendance. Petitioner certifies that he has made three earnest (albeit unsuccessful) attempts to establish such residency and that he is scheduled to close on a newly constructed home imminently. However, the record is equally clear that, to date, the family has never actually lived in District's area of attendance. As such, Petitioner's intention to do so is irrelevant. The family has never established an actual and physical abode in the District's attendance area. Thus, they lacked the necessary concurrence of physical presence and intention to establish domicile there.

Petitioner has failed to sustain the burden of demonstrating that V.P. was entitled to a free public education in Hunterdon Central Regional High School District as a domiciliary for the 2018-2019 and 2019-2020 school years. Thus, the Board is entitled to summary decision in its favor on this issue.

**Whether HCRHSD's counterclaim for tuition is incompatible with its participation in the Interdistrict Public School Choice Program**

Petitioner argues that, by virtue of its participation in the Interdistrict Public School Choice Program ("Choice Program"), HCRHSD is precluded from seeking tuition for the period of V.P.'s ineligible attendance. For support, Petitioner relies on N.J.S.A. 18A:36B-21b and N.J.A.C. 6A:12-1.2(c), which prohibit choice districts from utilizing a tuition program pursuant to N.J.S.A. 18A:38-3. Petitioner's reliance is misplaced.

Generally, local boards of education may admit otherwise eligible non-resident students on a tuition basis. N.J.S.A. 18A:38-3. However, districts that have applied and been accepted into the Choice Program are statutorily precluded from doing so. N.J.S.A. 18A:36B-21b. The applicable regulations make clear that a choice district “may not maintain at the same time both a tuition program pursuant to N.J.S.A. 18A:38-3 and a choice program...”

Here, there is nothing in the record to suggest that HCRHSD admitted V.P. as a non-resident student on a tuition basis. Rather, HCRHSD enrolled V.P. as a presumed domiciliary based upon the information that petitioner provided on the enrollment application, which indicated that he resided at an address within the HCRHSD attendance area. The instant request for tuition arises out of the later determination that petitioner was never in fact a domiciliary and V.P. was, therefore, ineligible to attend HCRHSD’s schools. Recovery of tuition under these circumstances is specifically permitted under N.J.S.A. 18A:38-1(b)(1) and N.J.A.C. 6A:22-6.2. And, there is nothing in the statutory or regulatory framework to support Petitioner’s contention that HCRHSD is prohibited from recovering tuition in accordance with those provisions because of its participation in the Choice Program. Moreover, the Commissioner has previously assessed tuition for ineligible attendance in choice districts. See e.g., T.F. o/b/o minor child, T.N. v. Bd. of Educ. of the City of Ocean City, EDU 10336-16, Initial Decision, (March 16, 2017), adopted, Comm’r (April 28, 2017) <<http://lawlibrary.rutgers.edu/oal/search.html> >

### **Calculation of Tuition**

When the evidence does not support the claim of domicile, N.J.S.A. 18A:38-1(b)(1) provides that tuition shall be assessed “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.” The regulations clarify that the tuition assessed covers the period during which the hearing and decision on appeal were

pending, and for up to one year of a student's ineligible attendance prior to the appeal's filing and including the 21-day period to file an appeal. N.J.A.C. 6A:22-6.2(a).

Here, the record supports a finding that V.P. has never been eligible to attend the schools of HCRHSD. Thus, tuition should be assessed for the entire period of V.P.'s attendance. It is undisputed that V.P. has been enrolled and attending Hunterdon Central Regional High School since the 2018-2019 school year commenced. The District's daily tuition rate for the 2018-2019 school year was \$107.65 per day, for a total of \$19,377. The District's daily tuition rate for the 2019-2020 school year is \$112.49 per day. As of the filing of the instant motion, 65 school days had elapsed, for a total of \$7,311.85.

Tuition is assessed in the amount of \$26,688.85, subject to increase at the rate of \$112.49 per school day of V.P.'s continued attendance.

### **CONCLUSION**

I **CONCLUDE** that there is no genuine issue of material fact and that the Board is entitled to summary decision as a matter of law.

I **CONCLUDE** that the Board properly found V.P. ineligible to attend the schools of the district and that the Board is entitled to tuition reimbursement at the applicable rate for the period of V.P.'s ineligible attendance during the 2018–2019 and 2019–2020 school years.

Finally, I **CONCLUDE** that, given the imminent closing on a home within the District's attendance area and the fact that there is no other cause for removal, V.P. should be allowed to finish out the 2019-2020 school year in District, with payment of tuition as indicated above.

### **DECISION AND ORDER**

Based upon the conclusions stated above that V.P. was not a domiciliary of the District, I hereby **ORDER** that respondent's motion for summary decision is **GRANTED**, and petitioner's appeal is **DISMISSED**.

**IT IS FURTHER ORDERED**, the District is due from petitioner the amount of \$26,688.85 for tuition for the 2018/2019 school year and the 2019/2020 school year through December 16, 2019; and the per diem sum of \$112.49 from December 16, 2019, to the date domicile in the district is established.

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.



July 13, 2020  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
**JOSEPH ASCIONE, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_