

New Jersey Commissioner of Education

Final Decision

S.H.P., on behalf of minor children,
O.P. and Z.P.,

Petitioner,

v.

Board of Trustees of the Elysian
Charter School, Hudson County,

Respondent.

Synopsis

Petitioner challenged the respondent Board's determination that O.P. and Z.P. were ineligible to attend Elysian Charter School because the family resides out of state. Petitioner traveled to India with the children in February 2008, informing the school that they would return about two weeks later. There were numerous subsequent delays in the family's plans, and petitioner later informed the school that the children were being home-schooled in India. The family continued to represent that the children would be returning to the charter school, but failed to meet the Board's requirement that O.P. and Z.P. return to class by April 30, 2018, and provide proof of residency within the district. The Board filed a motion for summary decision, as well as a counterclaim for tuition for the period of the children's ineligible attendance.

The ALJ found, *inter alia*, that: petitioner failed to sustain her burden of proving that her family was domiciled in New Jersey as of the date of the Board's notice of final ineligibility on April 30, 2018; there was sufficient evidence in the record to support that petitioner and her children were not residing in Hoboken, Jersey City, or the surrounding community at the time that the April 30, 2018 ineligibility letter was drafted; further, as of the date of the Office of Administrative Law (OAL) hearing in this matter – in November 2018 – the children were still in India. The ALJ concluded that petitioner failed to satisfy her burden of proving that the children were eligible for a free education at Elysian Charter School as of April 30, 2018; further, the ALJ denied the Board's counterclaim for tuition as no evidence was submitted in support of the claim. The ALJ dismissed the petition.

Upon review, the Commissioner found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1, public school in New Jersey is free to students who are domiciled in a school district; and as of February 2018, petitioner and her children were not domiciled in any school district in the State of New Jersey, as S.H. vacated her apartment and moved the family to India indefinitely. Accordingly, the Commissioner concluded that the minor children are not entitled to a free education in the charter school, or in any other school in New Jersey. With respect to the Board's counterclaim for tuition, the charter school may not seek tuition from petitioner as O.P. and Z.P. were not attending school during the time period at issue. Further, any attempt to recover tuition for a charter school student's period of ineligible attendance must be initiated by the child's district of residence. The Initial Decision was adopted with these modifications, and 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>

April 5, 2019

New Jersey Commissioner of Education
Final Decision

S.H.P., on behalf of minor children, O.P. and
Z.P.,

Petitioner,

v.

Board of Trustees of the Elysian Charter
School, Hudson County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹

In this matter, petitioner is challenging the Board's determination that the minor children were ineligible to attend the charter school because the family resides out of state. The Administrative Law Judge (ALJ) found that petitioner traveled with the children to India on or about February 9, 2018, and informed the school that they would return on February 26, 2018. The family's plans were delayed numerous times, but petitioner informed the school that she and her husband were home-schooling the minor children while they were in India. The Board informed petitioner on April 16, 2018 that the children were ineligible to attend the charter school because they did not reside at their former Jersey City address. Petitioner's husband attended the Board hearing on April 23, 2018, and the Board voted to allow the minor children to re-enroll so long as they returned to school by April 30, 2018. When the children did not return by that date, the charter school issued a notice of final ineligibility. Petitioner appealed to the

¹ Petitioner's exceptions were not considered for failure to comply with *N.J.A.C.* 1:1-18.4, as petitioner did not serve a copy on the opposing party or the OAL.

Commissioner and the school filed a motion for summary decision. As of the date of oral argument, November 13, 2018, the minor children were still in India. The ALJ concluded that petitioner had failed to sustain her burden of proving that her family was domiciled within New Jersey as of the Board's notice of final ineligibility on April 30, 2018, and as early as February 9, 2018, and the minor children were therefore ineligible to attend the charter school. The ALJ also denied the Board's request for tuition as no evidence regarding the calculation was presented.

Upon review, the Commissioner notes that public school in New Jersey is free to people over 5 and under 20 years of age who are domiciled in a school district. *N.J.S.A.* 18A:38-1. Petitioner and her minor children were not domiciled in any school district in the State of New Jersey, as she vacated her apartment and moved the family to India indefinitely in February 2018. As such, the minor children are not entitled to a free education in the charter school, or any school in New Jersey for that matter. Any attempt by petitioner to hold open her children's seats at the charter school while home-schooling them in India is inappropriate. With respect to the Board's counterclaim for tuition reimbursement, *N.J.S.A.* 18A:38-1b provides that tuition shall be assessed for the period of the student's "ineligible attendance" in the district.² The Commissioner notes that in this case, the charter school may not seek tuition from petitioner because the minor children were not attending school during the time period at issue and were instead being home-schooled.³

² Although the ALJ dismissed petitioner's counterclaim for failure to present evidence regarding tuition, a dismissal for that reason at this juncture is improper because the matter was decided by way of summary decision. However, the Commissioner agrees, for different reasons, that the counterclaim should be dismissed.

³ The Commissioner further notes that tuition for students at a charter school is paid directly by the school district of residence. *N.J.S.A.* 18A:36A-12. As such, the appropriate party to seek tuition for a charter school student's period of ineligible attendance is the district of residence that is responsible for tuition.

Accordingly, the Initial Decision of the OAL is adopted – as modified herein – as the final decision in this matter. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: April 5, 2019
Date of Mailing: April 9, 2019

⁴ 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).