

New Jersey Commissioner of Education
Final Decision

<p>S.B., on behalf of minor child, S.F.,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>Board of Education of the Morris School District, Morris County,</p> <p style="text-align: center;">Respondent.</p>
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Synopsis

Petitioner appealed the determination of the respondent Board that her child, S.F., was ineligible to receive a free public education in respondent's school district. S.F. divides her time equally between the Morris County School of Technology and the Morristown High School (MHS). The Board contended that S.B. and S.F. moved from Morristown to Boonton early in the 2018-19 school year, and from that point forward was ineligible to receive a free public education in the Morris School District. The Board filed a motion for summary decision, and a counterclaim for tuition.

The ALJ found, *inter alia*, that: there are no material facts at issue herein and the case is ripe for summary decision; pursuant to *N.J.S.A.* 18A:38-1(a), public school is free to a minor who is domiciled within the school district; if a student is not domiciled within the school district, she is not entitled to attend district schools free of charge, and the Commissioner may assess tuition pursuant to *N.J.S.A.* 18A:38-1b; in the instant case, it is uncontroverted that S.B. and S.F. moved from Morristown to Boonton on September 30, 2018, but S.F. continued to attend MHS for the remainder of the 2018-19 school year; S.F. remains a student at MHS for the 2019-20 school year; and the respondent Board is entitled to tuition reimbursement for the period of S.F.'s ineligible attendance. The ALJ concluded that S.B. owes the Board \$11,290.05 for the period from October 19, 2018 through June 30, 2019, and an additional amount of \$73.70 per day for each school day S.F. attended school in respondent's district during the 2019-20 school year.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ. However, in reviewing the tuition calculations in the Initial Decision, the Commissioner found that additional information is necessary in order to accurately calculate the total amount of tuition due to the Board. Accordingly, the Commissioner remanded this matter to the OAL for calculation of total tuition owed for S.F.'s ineligible attendance, and supplementation of the record as warranted.

<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>

December 3, 2019

New Jersey Commissioner of Education

Final Decision

S.B., on behalf of minor child, S.F.,

Petitioner,

v.

Board of Education of the Morris School
District, Morris County,

Respondent.

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

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain her burden of establishing that she was a domiciliary of Morristown for the majority of the 2018-19 school year, as she admitted moving to Boonton on or about September 30, 2018. The Commissioner further concurs with the ALJ that the minor child was, therefore, not entitled to a free public education in the District's schools, or at the Morris County School of Technology, which S.F. attended part time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in the district. The ALJ noted that the half-time tuition at Morristown High School for the 2018-19 school year was \$7,994.50, and the part-time tuition at the Morris County School of Technology for the same period was \$4,550. The ALJ prorated the tuition to \$11,290.05 for the portion of the school year in which S.F. was ineligible to attend school in the Morris School District, but it

is unclear what time period that calculation represents. The Initial Decision indicates that the \$11,290.05 represents the prorated tuition for the time period from October 1, 2018 through June 30, 2019; elsewhere in the decision, however, the time period in question is stated as October 19, 2018 through June 30, 2019. Without the daily tuition rate for the 2018-19 school year and the number of school days in which S.F. was ineligible to attend school in the district during that time, the Commissioner cannot calculate the exact tuition amount.

Additionally, the ALJ ordered that petitioner pay \$73.70 per day for each school day since the start of the 2019-20 school year and going forward, but it is unclear whether this daily tuition rate is comprised of the part-time rates from both of the schools S.F. attended, *i.e.*, the Morristown High School and the Morris County School of Technology; further, the ALJ failed to include a calculation for any defined portion of the 2019-20 school year, such as to the date the record closed or the date of the Initial Decision.

In order to calculate the total tuition owed to the Board in this matter, additional information is necessary, such as the number of school days on which the minor child attended school ineligibly during both the 2018-19 and 2019-20 school years in respondent's school district. Accordingly, this matter is remanded to the OAL for calculation of tuition due to the Board, and supplementation of the record as warranted.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: December 3, 2019
Date of Mailing: December 3, 2019

¹ 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

SUMMARY DECISION

OAL DKT. NO. EDU 05507-19

AGENCY DKT. NO. 60-3/19

S.B. ON BEHALF OF MINOR CHILD S.F.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE MORRIS
SCHOOL DISTRICT, MORRIS COUNTY,**

Respondent.

S.B., petitioner, pro se

Frances L. Febres, Esq., for respondent (Cleary, Giacobbe, Alfieri & Jacobs,
LLC, attorneys)

Record Closed: October 18, 2019

Decided: October 28, 2019

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

S.F. is a minor and a student in the Morris School District but is domiciled in the Boonton School District. Should public school be free to S.F. in the Morris School District when she is not domiciled there? No. Under N.J.S.A. 18A:38-1(a), public

school shall be free to a minor who is domiciled within the school district, and S.F. meets no exception under this law.

PROCEDURAL HISTORY

Petitioner, S.B., is the mother of S.F. Significantly, S.F. is a minor and a student in the Morris School District who divides her time equally between the Morris County School of Technology (Morris County VoTech) and Morristown High School. On October 19, 2018, the Morris School District discovered that S.B. had moved from Morristown, NJ, to Boonton, NJ. As a result, on November 1, 2018, the Morris School District sent S.B. a Notice of Initial Determination of Ineligibility, which afforded S.B. a hearing before its board of education to determine whether S.F. was entitled to a free, public education by the Morris School District.

On December 10, 2018, respondent, the Morris School District Board of Education (Board), held the hearing. On March 11, 2019, the Board determined that S.B. had failed to prove that S.F. lived within the Morris School District; concluded that S.F. was ineligible to receive a free, public education from it; and, consequently, voted to remove S.F. from the district. On March 14, 2019, the Board issued its Notice of Final Determination of Ineligibility. In its notice, the Board informed S.B. that she may be assessed tuition.

On March 25, 2019, S.B. appealed the determination.

On April 23, 2019, the Department of Education, Office of Controversies and Disputes, transmitted the case to the Office of Administrative Law 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 under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On April 29, 2019, the case was assigned to me for hearing. On May 3, 2019, I held an initial prehearing conference, during which time the parties advised me that they

were negotiating a settlement of the case. As a result, another prehearing conference was scheduled for May 17, 2019.

On May 17, 2019, I held the prehearing conference to learn the status of the settlement negotiations, during which time the parties advised me that they would enter into a settlement agreement within the next thirty days, so I scheduled another prehearing conference for June 19, 2019.

On June 19, 2019, before I convened the prehearing conference, the parties advised me that they could not enter into a settlement agreement and requested an adjournment of the prehearing conference until the following day, June 20, 2019.

At the prehearing conference on June 20, 2019, the parties informed me that they could not settle the case, but agreed that it could be resolved through a motion for summary decision, which the Board represented it would file shortly.

On September 12, 2019, the Board filed its motion for summary decision. On September 25, 2019, more than the ten days N.J.A.C. 1:1-12.2 allows for the filing of opposition, petitioner emailed this tribunal to request a conference call, which was scheduled for October 18, 2019. On October 18, 2019, before the conference call, petitioner emailed her opposition, and during the conference call, the Board advised that it would not submit a response. As a result, I closed the record.

FINDINGS OF FACT

Based on the documents submitted in support of and in opposition to the motion for summary decision, I **FIND** the following as **FACT** for purposes of this motion only:

Petitioner, S.B., is the mother of S.F. S.F. is a minor and a student in the Morris School District who divides her time equally between the Morris County VoTech and Morristown High School. Before the 2018–19 school year, S.B. and S.F. lived in Morristown, NJ, at 23 D. Place. S.B. and S.F., however, moved for the 2018–19 school

year. During the 2018–19 school year, on September 30, 2018, S.B. and S.F. moved to Boonton, NJ, at 81 D. Avenue. Uncontroverted evidence are the fact that on October 19, 2018, mail was returned to the Morris School District from 23 D. Place, Morristown, NJ, and admissions by S.B. that she and S.F. did, in fact, move to 81 D. Avenue, Boonton, NJ. Indeed, S.B. wrote a letter to the Commissioner of the Department of Education, dated March 20, 2019, listing her home address as 81 D. Avenue, Boonton, NJ, and another letter to the Commissioner dated March 25, 2019, stating that she moved from Morristown to 81 D. Avenue, Boonton, NJ, on September 30, 2018.

Despite having moved from Morristown to Boonton, S.F. continued to attend high school at Morristown High School for the 2018–19 school year, and she continues to attend high school at Morristown High School for the 2019–20 school year to this day.

The half-time tuition for general-education attendance at Morristown High School for the 2018–19 school year is \$7,994.50. The part-time tuition for attendance at the Morris County VoTech for the 2018–19 school year is \$4,550. Thus, the total and prorated tuition for S.F. to attend Morristown High School and the Morris County VoTech between October 1, 2018, and June 30, 2019, is \$11,290.05.

Meanwhile, the per-diem tuition rate for the 2018–19 school year is \$69.69, and the per-diem tuition rate for the 2019–20 school year is \$73.70.

To date, S.B. has made no payments to the Morris School District.

CONCLUSIONS OF LAW

A party may move for summary decision upon any or all 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 may assess tuition, N.J.A.C. 6A:22-6.2.

In this case, S.F. is domiciled in Boonton, NJ, and has been domiciled in Boonton, NJ, since October 19, 2018, when she moved with her mother from Morristown to Boonton. Given this circumstance, the Morris School District assessed S.B. tuition for the time her daughter attended school at Morristown High School and the Morris County VoTech while she and her daughter were no longer domiciled in Morristown. Accordingly, I **CONCLUDE** that S.B. owes the Board \$11,290.05 for the period of ineligibility, from October 19, 2018, through June 30, 2019, and \$73.70 for each school day going forward since the start of the 2019–20 school year.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that S.B. owes the Board \$11,290.05 for the period of ineligibility, from October 19, 2018, through June 30, 2019, and \$73.70 for each school day going forward since the start of the 2019–20 school year.

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 is authorized by law to make a final decision in this case. 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 under 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.

October 28, 2019

DATE



BARRY E. MOSCOWITZ, ALJ

Date Received at Agency: _____
October 28, 2019

Date Mailed to Parties:
dr _____