

16-20

OAL Dkt. No. EDU 09617-19

Agency Dkt. No. 143-6/19

## **New Jersey Commissioner of Education**

### **Final Decision**

C.E., on behalf of minor child K.E.,

Petitioner,

v.

Board of Education of the Township of  
West Orange, Essex 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 did not meet his burden of demonstrating that he was a domiciliary of West Orange for the 2018-19 and 2019-20 school years. 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 time period during which the minor child was ineligible to attend school in West Orange. Therefore, the Board is entitled to tuition reimbursement in the amount of \$21,205.00 for tuition costs incurred from the beginning of the 2018-2019 school year through October 21, 2019, and \$101.51 for each school day following October 21, 2019, during which time petitioner's minor child was ineligible to attend school in West Orange.

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 \$21,205.00, plus \$101.51 for each school day following October 21, 2019, for tuition costs incurred during the time period in which K.E. was ineligible to attend school in West Orange. The petition of appeal is hereby dismissed.

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

COMMISSIONER OF EDUCATION

Date of Decision: January 9, 2020  
Date of Mailing: January 10, 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**

**SUMMARY DECISION**

OAL DKT. NO. EDU 09617-19

AGENCY DKT. NO. 143-6/19

**C.E. ON BEHALF OF MINOR CHILD K.E.,**

Petitioner,

v.

**TOWNSHIP OF WEST ORANGE BOARD  
OF EDUCATION, ESSEX COUNTY,**

Respondent.

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**C.E.** petitioner, pro se

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

Record Closed: November 24, 2019

Decided: December 6, 2019

BEFORE: **NANCI G. STOKES**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, C.E., is the father of K.E, who is a minor and student in the West Orange Public School District (District). During the 2018- 19 school year and through the current school year, K.E. was not domiciled in the District. Should public school be

free to K.E. in the District for the 2018-19 school year? No. Public school shall be free to a minor who is domiciled within the school district. N.J.S.A. 18A:38-1(a).

### **PROCEDURAL HISTORY**

Petitioner, C.E., is the father of K.E, who is a minor and a student in the District.

On December 6, 2016, the West Orang Board of Education (Board) discovered that K.E. was not domiciled within the District and voted to remove K.E. from its schools. Petitioner appealed that determination, and the case was transmitted to the Office of Administrative Law (OAL). K.E. was found not to be domiciled within the District and therefore, ineligible for free public education in the District. On May 18, 2017, C.E. was ordered to pay \$17,069 in back tuition for the 2016-17 school year. See C.E. o/b/o K.E. v. West Orange Public School District, OAL DKT. No. EDU 00494-17, initial decision (May 18, 2017).

On January 10, 2018, the Board again discovered that K.E. was not domiciled within the District, and again voted to remove K.E. from its schools. Petitioner appealed that determination, and the case was transmitted to the OAL. K.E. was found not to be domiciled within the District and therefore, ineligible for free public education in the District, on June 5, 2018, C.E. was ordered to pay \$20,000 in back tuition for the 2017-18 school year. See C.E. o/b/o K.E. v. West Orange Public School District, OAL DKT. No. EDU 03717-18, initial decision (June 5, 2018).

In October 2018, C.E. advised the Board that he was closing on a house in West Orange, that he would provide documentation that K.E. was eligible to continue attending school in the District, and that he would remit the remaining \$10,000 in back tuition for the 2017-18 school year.

On October 15, 2018, the Board held a residency hearing, determined for a third time that K.E. was not domiciled in the District, concluded that K.E. ineligible to receive

a free education from it, and voted to remove K.E. from the District. C.E. paid the remaining \$10,000 in back tuition owed for the 2017-18 school year on October 22, 2018, but despite several requests, he did not supply documentation establishing K.E.'s domicile in West Orange for the 2018-19 school year.

On May 29, 2019, the Board notified C.E. that K.E. would be removed from rolls on June 21, 2019, and that C.E. would be assessed tuition for each day of ineligible attendance.

On June 21, 2019, C.E. appealed the determination.

On July 17, 2019, the Department of Education, Office of Controversies and Disputes, transmitted the case to the OAL as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, 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 August 6, 2019, I held an initial prehearing conference during which time the parties agreed that discovery would be exchanged by September 20, 2019, and that an additional prehearing conference would be held prior to the October 21, 2019, hearing date. On August 7, 2019, a Prehearing Order was entered memorializing the discussion and scheduling a prehearing conference for September 30, 2019. On September 30, 2019, C.E. advised he had not yet supplied documentation supporting K.E.'s residency in West Orange. I instructed C.E. to provide all discovery to the Board by October 8, 2019.

On October 17, 2019, the Board notified the court that C.E. did not supply any discovery.

On the hearing date of October 21, 2019, the parties agreed that there was no need to conduct a hearing, and that the case could be resolved through a motion for

summary decision. On the record, the Board presented its oral argument for summary decision, and C.E. did not dispute the Board's position.

On November 4, 2019, the Board filed its motion for summary decision; C.E. filed no opposition; and on November 24, 2019, I closed the record.

### **FINDINGS OF FACT**

Based on the documents the Board submitted in support of the motion for summary decision, and viewing them in the light most favorable to C.E., I **FIND** the following as **FACT**:

During the period of April 3, 2019, through May 23, 2019, the Board's residency investigators conducted simultaneous surveillance of the East Orange address identified on C.E.'s 2018 and 2019 court filings, banking records, and residency appeal petition in this case; as well as the West Orange address stated on K.E.'s student registration record, C.E.'s September 2017 application for PSE&G services, and a month-to-month lease signed by C.E. on September 20, 2017. Other than K.E.'s student registration record, no documentation supporting residency in West Orange for 2018 or 2019 was presented to the District.

On ten occasions from April 3, 2019, through May 23, 2019, during the morning hours, the investigator observed K.E. and C.E. entering and exiting the East Orange address, and the presence of C.E.'s vehicle; whereas at no time did an investigator observe K.E. or C.E. entering or exiting the West Orange address. The Board's residency investigators concluded that the East Orange address listed on the residency appeal petition is where K.E. resided with C.E. A prior investigation with simultaneous surveillance of the same East Orange and West Orange addresses in November and December 2017 and January 2018 revealed the same findings.

On May 29, 2019, the Board notified C.E. that K.E. would be removed from rolls on June 21, 2019, and that C.E. would be assessed tuition for each day of ineligible attendance.

In this case, C.E. presents no evidence to establish his domicile or that of his daughter, K.E., in the District.

Despite her domicile with C.E. in East Orange, K.E. continued to attend the West Orange public schools for the 2018-19 school year, and she continues to attend the West Orange public schools for the 2019-20 school year to this day.

Based upon a per diem tuition rate of \$101.45, the tuition for general education attendance in District for the 2018-19 school year is \$18,566. The per diem tuition rate for the 2019-20 school year is \$101.51. Therefore, the tuition for general education attendance in District from September 4, 2019, through the hearing date of October 21, 2019, is \$2,639.

To date, C.E. has made no payments to the District for the 2018-19 or 2019-20 school year.

### **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. Ibid. “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).

Even where a statute calls for a “hearing,” where a motion for summary decision is made and supported by documentary evidence, and where the objector submits no evidence to demonstrate a genuine issue of material fact, the motion procedure constitutes the hearing and no trial-type hearing is necessary. Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 120-21 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

To determine whether there exists a “genuine issue” of material fact that precludes summary judgment, 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 demonstrate that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins., 142 N.J. 520, 540 (1995).

In this case, no genuine issue of any material fact exists, and I **CONCLUDE** that this case is ripe for summary decision.

Public school shall be free to a minor who is domiciled within the school district. N.J.S.A. 18A:38-1(a). A student is domiciled in a school district if his parent 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); State v. Benny, 20 N.J. 238, 250 (1955). 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). If a student does not have a right to attend the school district, the Commissioner may assess tuition. See N.J.A.C. 6A:22-6.2.

Where a local board of education seeks removal of a student, the parent may appeal to the Commissioner of Education. N.J.S.A. 18A:39-1(b)(2). In the proceeding before the Commissioner, the parent has the burden of proof by a preponderance of the evidence that the child meets eligibility requirements for a free education. Ibid. If the evidence does not support the parent’s claim, the Commissioner shall assess the parent



tuition for the student prorated to the time of the student's ineligible attendance in the schools of the district. Ibid.

In this case, a preponderance of the evidence demonstrates that K.E. is domiciled in East Orange, New Jersey, and was domiciled in East Orange for the 2018-19 school year to the present; and thus, the Board is entitled to prevail as a matter of law given my findings of fact, the tuition C.E. owes the District is clear. Therefore, I **CONCLUDE** that C.E. owes the Board \$18,566 for the period of ineligibility for the 2018-19 school year; \$2,639 from September 4, 2019, through the scheduled hearing date of October 21, 2019; and \$101.51 for each school day attended beyond October 21, 2019, for the remainder of the 2019-20 school year.

### **ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that C.E. owes the Board \$18,566 for the period of ineligibility for the 2018-19 school year; \$2,639 from September 4, 2019, through the scheduled hearing date of October 21, 2019; and \$101.51 for each school day attended beyond October 21, 2019, for the remainder 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 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.



December 6, 2019

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DATE

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**NANCI G. STOKES, ALJ**

Date Received at Agency:

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December 6, 2019

Date Mailed to Parties:

ljb

**APPENDIX**

**LIST OF EXHIBITS**

**For Petitioner:**

None

**For Respondent:**

- R-1 Motion for Summary Decision
- R-2 Certification of Gerard Drappi, Residency Officer, with exhibits
- R-3 Certification of J. Scott Cascone, Superintendent of Schools, with exhibits.