

New Jersey Commissioner of Education

Final Decision

S.B., on behalf of minor children, J.B., L.K., and S.K.,

Petitioner,

v.

Board of Education of the Borough of
Barrington, Camden County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that her minor children were not domiciled within the Barrington School District from March 8, 2021 until the end of the 2020-21 school year and were therefore not eligible to receive a free public education in the Barrington public schools. The Board filed a motion for summary decision and sought reimbursement of tuition for the period of J.B., L.K., and S.K.'s ineligible attendance.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioner's minor children were enrolled in Barrington schools during the 2019-2020 school year as Affidavit Students based on S.B.'s claim that the children were residing with their grandmother in Barrington due to a family or economic hardship; petitioner was notified by the Board in March 2020 that the documentation she submitted in support of this claim was insufficient to enroll the children as Affidavit Students; before the children could be removed from the District, all New Jersey schools were ordered closed due to the COVID 19 epidemic, and the children were permitted to remain enrolled remotely; in February 2021, the Board notified petitioner that her children had been determined to be ineligible for continued enrollment in its school district because the grandmother and children were no longer residing in Barrington and S.B. was found to be living in Magnolia, New Jersey; pursuant to *N.J.S.A. 18A:38-1(b)(2)*, petitioner has the burden of proof in a determination of residency; petitioner has offered no competent proof that she and her minor children were domiciled in Barrington during the period from March 8, 2021 through the end of the 2020-21 school year; petitioner has in fact admitted that she has not resided in the District since 2018, and now resides in Haddon Township. The ALJ concluded that the minor children were not entitled to receive a free public education in Barrington schools during the period at issue; accordingly, the respondent Board is entitled to reimbursement in the amount of \$8,924.40 for tuition costs during the period of ineligible attendance.

Upon review of the record in this matter, the Commissioner concurred with the ALJ's findings and conclusion. The Initial Decision was adopted as the final decision in this matter, and the petitioner was ordered to reimburse the Board for tuition in the amount of \$8,924.40. The petition was dismissed.

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.

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Petitioner,

v.

Board of Education of the Borough of
Barrington, Camden 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 Barrington from March 8, 2021 to the end of the 2020-21 school year. The Commissioner further concurs with the ALJ's conclusion that the minor children were, 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 children were ineligible to attend school in Barrington. Therefore, the Board is entitled to tuition reimbursement in the amount of \$8,924.40 for the for the time period from March 8, 2021 through the end of the 2020-21 school year, during which time petitioner's three minor children were ineligible to attend.

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 \$8,924.40 for tuition costs incurred during the time period in which J.B., L.K., and S.K. were ineligible to attend school in Barrington. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 30, 2021
Date of Mailing: September 30, 2021

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 03003-21

AGENCY DKT.NO. 34-3/21

**S.B. ON BEHALF OF MINOR
CHILDREN J.B., L.K. AND SK.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
BOROUGH OF BARRINGTON,
CAMDEN COUNTY**

Respondent.

S.B., on behalf of minor children J.B, L.K. and S.K. petitioners, pro se

Mark G. Toscano, Esq., for respondent (Comegno Law Group, attorneys)

Record Closed: June 24, 2021

Decided: July 12, 2021

BEFORE **JEFFREY R. WILSON**, ALJ:

STATEMENT OF THE CASE

Petitioner, S.B., on behalf of her minor children J.B, L.K. and S.K., challenges the determination made by the respondent, Borough of Barrington Board of Education (Board), that she, her family, and children do not, and have not for some time, resided

within the Barrington School District. The respondent argues that pursuant to N.J.S.A. 18A:38-1(b)(2), the Superintendent may apply to the Board of Education for the removal of the students, and the Commissioner may assess tuition against the students' parent or guardian if the students are deemed ineligible. The respondent seeks payment of tuition and costs for the number of days J.B, L.K. and S.K. attended school in the Barrington School District while ineligible to do so.

PROCEDURAL HISTORY

The matter was filed at the Office of Administrative Law (OAL) on March 26, 2021, as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. On May 25, 2021, the respondent filed a motion for summary decision. The petitioner filed a response in the form of two emails, on June 24, 2021, and the record closed.

FINDINGS OF FACT

The following facts of this case are not in dispute; therefore, I **FIND** as **FACT**:

1. On March 4, 2020, it was determined by the District that the petitioners, who were residing with their grandmother at XXXX Clements Bridge Road, Apartment XXX, Barrington New Jersey, were ineligible for enrollment in the Barrington School District as Affidavit Students. A formal letter notifying of this determination, was hand delivered to S.B. on March 4, 2020.
2. The Board determined that there was insufficient proof that the children's' mother, S.B., was incapable of caring for the petitioners due to a family or economic hardship. The documentation submitted by S.B. also indicated that the children would only be residing with their grandmother in Barrington until the end of the 2019-2020 school year.
3. Despite S.B.'s indication that an appeal would be filed following the Board's March 4, 2020, letter, no appeal was filed challenging the Board's determination that the petitioners did not qualify for enrollment as Affidavit Students.

4. Before the children could be removed from the District, all New Jersey schools were ordered closed by the Governor as a result of the COVID-19 pandemic and remained closed through the end of the 2019-2020 school year. The children were permitted to remain enrolled in the District during the period of ordered closure, and during the period in which the District attempted to re-open for in-person instruction.
5. In December 2020, the Board learned that the children's grandmother no longer resided within the Barrington School District.
6. On February 25, 2021, the District sent S.B. a Notice of Ineligibility letter.
7. The February 25, 2021, letter detailed new information discovered by the District. The District learned that the children's grandmother, and the children themselves, were no longer residing at the XXXX Clements Bridge Road, Apartment XXX address.
8. Around this time, the Board also learned that S.B. has not resided within the Barrington School District, and in fact, is residing at the XXX E. Evesham Avenue address in Magnolia, New Jersey.
9. In the February 25, 2021, letter, the Board determined that the children were ineligible for continued enrollment in the Barrington School District because neither the children, their grandmother, nor S.B. were residing at XXXX Clements Bridge Road, or at any other address within the Barrington School District.
10. The Board held a meeting on March 8, 2021, wherein S.B. appeared. The Board found that the children were ineligible to continue to attend school free of charge in Barrington. For the reasons set forth in the February 25, 2021, letter as well as S.B. admitting that she left the Magnolia School district due to issues with the District, the Board made this determination of ineligibility.
11. During the March 8, 2021, Board meeting, S.B. alleged to the District, for the first time, that there was previously a family crisis incident relating to domestic violence. S.B.

alleged that this domestic violence incident occurred in the Spring of 2020 and was the impetus for S.B. and the children to no longer reside at the XXX E. Evesham Avenue address. Prior to the March 8, 2021, meeting, the District had not been informed of any such alleged family crisis incident.

12. Despite repeated requests from the Board, S.B. has failed to provide any documentation supporting her claim that a family crisis incident occurred which required the children to relocate out of the Magnolia School District.

13. However, even assuming that S.B.'s allegations of a family crisis actually took place, the petitioners would still not be entitled to attend the Barrington School District free of charge. If anything, the petitioners would have been allowed to remain enrolled in the Magnolia School District during the family's relocation period.

14. Following the March 8, 2021, meeting, the Board issued a letter on March 15, 2021, outlining their determination that the children are ineligible to continue attending Barrington Schools.

15. S.B. has admitted to the Board that neither she, the children, nor the children's grandmother presently reside within the Barrington School District.

16. The petitioners filed an appeal on March 2, 2021.

17. S.B. admitted during the May 10, 2021, telephone prehearing conference in this matter, that she presently resides at XXXXB Grant Ave, Haddon Township, NJ 08107, (with J.B., L.K. and S.K.), which residence is not located within the attendance area of the District.

18. S.B. listed XXX E. Evesham Avenue, Magnolia NJ 08049 as her address on the Residency Appeal form filed on March 24, 2021. The Magnolia residence is similarly not located within the attendance area of the District.

19. To date, S.B. has provided no further information demonstrating her residence in

District, or otherwise demonstrating J.B.'s, L.K.'s. and S.K.'s eligibility to attend the District's schools.

20. The Board's daily tuition rate for the 2020-2021 school year was \$44.44 per day per child. Therefore, the Board is owed tuition from S.B. in the amount of \$8,924.40 for J.B.'s, L.K.'s and S.K.'s attendance from March 8, 2021, through the end of the school year.

LEGAL DISCUSSION

N.J.A.C. 1:1-12.5(b) provides that a motion for summary decision may be granted 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. See also Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995). The opposing party must submit responding affidavits showing that there is indeed a genuine issue of material fact, which can only be determined in an evidentiary proceeding, and that the moving party is not entitled to summary decision as a matter of law. Failure to do so, entitled the moving party to summary judgment. Id. at 520. Moreover, even if the non-moving party comes forward with some evidence, the courts must grant summary judgment if the evidence is "so one-sided that [moving party] must prevail as a matter of law." Id. at 536. If the non-moving party's evidence is merely colorable, or is not significantly probative, summary judgment should not be denied. See Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

In view of the standard for summary decision, the petitioner's Residency Appeal Petition fails and must be dismissed in its entirety based on S.B.'s own admission that she does not live within the Board's attendance area. N.J.S.A. 18A:38-1 provides that "Public schools shall be free to the following persons over five and under 20 years of age: a. Any person who is domiciled within the school district. . . ." N.J.A.C. 6A:22-3.1(a)(1) makes clear that "A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district."

N.J.S.A. 18A:38-1(b)(2) further provides:

. . . If 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 and the child is not kept in the home of another person domiciled within the school district and supported by him gratis as if the child was the person's own child as provided for in paragraph (1) of this subsection, the superintendent or administrative principal may apply to the board of education for the removal of the child. The parent or guardian shall be entitled to a hearing before the board and if in the judgment of the board the parent or guardian is not domiciled within the district or the child is not kept in the home of another person domiciled within the school district and supported by him gratis as if the child was the person's own child as provided for in paragraph (1) of this subsection, the board may order the transfer or removal of the child from school. 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 subsection.

Here, S.B. has failed to show that she resides within and/or been domiciled within the District. In fact, she has admitted within her Petition and during the initial hearing in this matter, that she presently resides (with J.B., L.K. and S.K.) at XXXXB Grant Ave, Haddon Township, NJ 08107, (with J.B., L.K. and S.K.), which residence is not located within attendance area of the District. S.B. further admits that she has not lived within the District since 2018. S.B. has failed to provide any subsequent proofs that she resides within the District's attendance area. As a final matter, S.B. herself has provided this tribunal with a Haddon Township address to receive mail and service in this matter, further proving that she does not reside within the District's attendance area.

Based on the foregoing, I **CONCLUDE** there are no genuine facts in dispute and that summary decision is warranted.

ORDER

It is hereby **ORDERED** that respondent's motion for summary decision be **GRANTED**. Based upon he the Board's daily tuition rate for the 2020-2021 school year

of \$44.44 per day per child, it is further **ORDERED** that the Board is owed tuition from the Petitioner in the amount of \$8,924.40 for J.B.'s, L.K.'s and S.K.'s attendance from March 8, 2021, through the end of the 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.



July 12, 2021

DATE

JEFFREY R. WILSON, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JRW/tat

APPENDIX

LIST OF EXHIBITS

For Petitioner:

P-1 Email response to motion for summary decision, transmitted to the Office of Administrative Law on June 24, 2021.

For Respondents:

R-1 Motion for summary decision filed with the Office of Administrative Law on May 25, 2021.