

New Jersey Commissioner of Education

Final Decision

J.C., on behalf of minor child, J.C.,

Petitioner,

v.

Board of Education of the Borough of Closter,
Bergen County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that her minor child was not entitled to a free public education in the Closter School District following the family's relocation to Norwood after the property they were renting in Closter was sold in January 2022. Petitioner sought an order directing the Board to allow J.C. to continue to attend elementary school in Closter free of charge for the remainder of the 2021-2022 school year. The Board filed a counterclaim for tuition for the period of J.C.'s ineligible attendance, February 10, 2022 to April 27, 2022. Petitioner failed to attend two scheduled hearings in this matter without explanation.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A. 18A:38-1(b)(2)*, if a school district finds that a non-resident child is attending one of its schools, the district may act to remove the child; here, the petitioner admitted at a Board hearing that the family had relocated to Norwood and no longer lived in Closter; it is undisputed that for the period in question, February 10, 2022 to April 27, 2022, petitioner and her family were domiciled in Norwood; and petitioner failed to appear at two scheduled hearings in this matter and provided no explanation for her failure to appear. Accordingly, the ALJ dismissed the within residency appeal with prejudice and ordered petitioner to pay the Board tuition in the amount of \$3,847.50 for the period of J.C.'s ineligible attendance.

Upon review, the Commissioner concurred with the ALJ's finding that petitioner failed to sustain her burden of establishing that she was a domiciliary of Closter during the period from February 10, 2022 through April 27, 2022, and further concurred with the ALJ's conclusion that J.C. was, therefore, not entitled to a free public education in the District's schools during that time. However, the Commissioner noted that the Initial Decision does not include the detail necessary for the calculation of tuition pursuant to *N.J.S.A. 18A:38-1b*. Accordingly, this matter was remanded to the Office of Administrative Law for further proceedings to calculate the number of days of J.C.'s ineligible attendance in Closter's schools, as required by *N.J.S.A. 18A:38-1b*.

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.

173-22

OAL Dkt. No. EDU 02441-22

Agency Dkt. No. 46-3/22

New Jersey Commissioner of Education

Final Decision

J.C., on behalf of minor child, J.C.,

Petitioner,

v.

Board of Education of the Borough of
Closter, Bergen 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 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 Closter during the period from February 10, 2022 through April 27, 2022. The Commissioner further concurs with the ALJ's conclusion that J.C. 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 the district. The statute specifically provides that the Commissioner may order tuition "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." *N.J.S.A. 18A:38-1b*. The Initial Decision notes that the cost of

tuition in the district is \$1,539.00 per month, but this information does not permit the Commissioner to make the required calculation of 1/180 of the total *annual* per pupil cost.¹ Furthermore, there is no evidence in the record of how many days of ineligible attendance there were between February 10, 2022 and April 27, 2022. The amount of tuition awarded by the ALJ appears to be two and a half times the monthly tuition cost, perhaps because there are approximately two and a half months between February 10, 2022 and April 27, 2022. If so, in addition to being incorrectly based on the monthly cost rather than the annual cost, the calculation is also incorrectly based on calendar days, rather than school days.

Accordingly, this matter is remanded to the Office of Administrative Law for further proceedings to calculate the number of days of ineligible attendance, as required by *N.J.S.A. 18A:38-1b*.

IT IS SO ORDERED.


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

Date of Decision: July 13, 2022
Date of Mailing: July 13, 2022

¹ The Commissioner declines to assume that the annual cost is ten times the monthly cost.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 02441-22

AGENCY DKT. NO. 46-3/22

J.C. ON BEHALF OF MINOR CHILD J.C.,

Petitioner,

vs.

**BOARD OF EDUCATION OF THE
BOROUGH OF CLOSTER, BERGEN COUNTY,**

Respondent.

J.C., Petitioner, pro se

Stephen R. Fogarty, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: June 3, 2022

Decided: June 13, 2022

BEFORE: THOMAS R. BETANCOURT, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner appeals the Final Notice of Determination of Ineligibility by Respondent school district, dated February 18, 2022, wherein Respondent determined that the minor child was ineligible to attend school in Respondent school district.

Petitioner filed a pro se petition of appeal with the Office of Controversies and Disputes in the New Jersey Department of Education on March 14, 2022.

Respondent filed its Answer, Separate Defenses and Counterclaim thereto on March 29, 2022.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on March 30, 2022 as a contested case.

A Prehearing Order was entered on April 5, 2022.

The matter was listed for a hearing on May 17, 2022 via Zoom. Petitioner failed to appear, or otherwise contact the OAL regarding the non-appearance. The undersigned adjourned the matter to June 3, 2022, so as to notify Petitioner that the matter would proceed to a proof hearing should Petitioner not log in to the Zoom hearing. Notices were provided. Petitioner failed to appear. Respondent requested a proof hearing on their counterclaim.

The hearing proceeded on June 3, 2022, without Petitioner pursuant to N.J.S.A. 1:1-14.4(d)

ISSUE

Is the minor child eligible to attend school in the Closter school district; and, if not, is the District entitled to tuition reimbursement for the period the child attended the Closter school district after being found ineligible.

Respondent's Case

Floro Villanueva testified as follows:

He is the Business Administrator for the Closter School District. Part of his duties entail residency determinations. As a routine internal review he checks Zillow listings to see if any properties were sold and checks this against students' residencies. He noted that the house in which J.C. and her family resided was sold. J.C. had also informed staff that the family had moved.

Mr. Villanueva had a secretary, Cheryl Boehm, contact the parents, who ultimately admitted they had moved. Mr. Villanueva forwarded a notice of ineligibility to the parents dated February 10, 2022. He had spoken to them about the issue on February 8, 2022.

The parents attended the February 17, 2022 Closter Board of Education meeting, where an eligibility hearing was held. The parents presented their position about continuing J.C. in the Closter School District. At this meeting the Board voted that J.C. was not eligible to be enrolled in the Closter School District.

Mr. Villanueva sent a Final Notice of Ineligibility to the parents, dated February 18, 2022.

The parents withdrew J.C. on April 27, 2022 from the Closter School District and enrolled her in the Norwood School District.

The cost of tuition per month for grades One through Four in the Closter School District is \$1,539.00. The total cost of tuition from February 10, 2022 through April 27, 2022 is \$3,847.50. This is based on the per pupil costs set forth in the budget of the Closter School District.

I FIND the following **FACTS**:

J.C. was enrolled in the Closter School District on November 11, 2019. (R-1) J.C. continued to be enrolled in the Closter School District until she was enrolled in the Norwood School District April 27, 2022.

The house where J.C. resided in Closter was sold on January 7, 2022. (R-3) J.C. and her family moved to Norwood and reside therein. Petitioner was notified of a determination of ineligibility by the Closter Public Schools by letter dated February 10, 2022. (R-4). The parents of J.C. attended the meeting of the Closter Board of Education on February 17, 2022, and a eligibility hearing was held. The parents presented their position to the Board. The parents acknowledged that they no longer lived in Closter and confirmed they were living in Norwood.

A Final Notice of Ineligibility was made at its meeting of February 17, 2022, and was forwarded to Petitioner by letter dated February 18, 2022. (R-5)

Petitioner appealed this determination to the Commissioner of the Department of Education on March 11, 2022. J.C. continued to be educated in the Closter School District.

The cost of tuition per month for grades One through Four in the Closter School District is \$1,539.00. The total cost of tuition from February 10, 2022 through April 27, 2022 is \$3,847.50.

Petitioner is responsible for tuition costs for J.C. from the date of the Initial Notice of Eligibility, February 10, 2022, through the date J.C. was withdrawn, April 27, 2022. The total amount owed is \$3,847.50.

LEGAL ANALYSIS AND CONCLUSION

Any child between the ages of five and twenty years old is entitled to a free public education in the district in which he is a resident. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). A student is a resident of 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). A student may attend school in a district in which he is a non-resident, with or without payment of tuition, at the discretion of the school district. N.J.S.A. 18A:38-3(a); N.J.A.C. 6A:22-2.2.

If a school district discovers that a non-resident child is attending one of its schools, the district may act to remove the child. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.3. If so, the chief school administrator must first issue a notice of ineligibility. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.2, -4.3. The notice shall inform the parent of the right to a hearing before the school district and the right to appeal the school district's decision to the Commissioner of Education. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-5.1. The notice shall also inform the parent whether the district's policy allows for continued attendance, with or without tuition, for students who move out of the district during the course of the school year. N.J.A.C. 6A:22-4.2(b)(7)(i). If, on appeal to the Commissioner, the parent fails to demonstrate his child's entitlement to attend the schools of the district, the parent may be liable for tuition for any period of ineligible attendance. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.2; N.J.A.C. 6A:22-6.2, -6.3.

In the instant matter Respondent provided the requisite notice on February 10, 2022. A hearing was held before the school district on February 17, 2022. A final notice of ineligibility was provided on February 18, 2022. Further, the petitioner admitted to Ms. Boehm and at the hearing that the family was no longer living in Closter.

According to N.J.A.C. 6A:22-6.3(a), "[t]uition assessed pursuant to the provisions of this section 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." However, "[n]othing in this chapter shall preclude an equitable determination, by the district board of education or the Commissioner, that, when the particular 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).

The Closter School District Business Administrator calculated the tuition costs based upon the school district budget for students in grades one through four. The total

equals \$3,847.50 for the period J.C. was in attendance in Closter while residing in Norwood.

ORDER

It is hereby **ORDERED** that Petitioner's residency appeal is **DISMISSED**, with prejudice; and

It is further **ORDERED** that Respondent is entitled to tuition reimbursement in the amount of \$3,847.50; and

It is further **ORDERED** that Petitioner shall pay said amount to Respondent.

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.

June 13, 2022
DATE



THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

June 13, 2022
6-13-22

Date Mailed to Parties:
db

APPENDIX

List of Witnesses

For Petitioner:

Floro Villanueva, Business Administrator

For Respondent:

None

List of Exhibits

For Petitioner:

None

For Respondent:

R-1 November 10, 2019 student registration file

R-2 2019-2020 First Grade Report Card

R-3 Zillow Property Listing for 100 Knickerbocker Road, Closter, NJ

R-4 February 10, 2022 Initial Notice of Ineligibility

R-5 February 18, 2022 Final Notice of Ineligibility

R-6 March 11, 2022 Petition of Appeal with Envelope

R-7 Closter Board of Education Policy 5111, "Eligibility of Resident/Nonresident Students

R-8 2021-2022 Hillside Elementary School Trimester/Marking Period and Granting Schedule