

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 05946-22

AGENCY DKT. NO. 46-3/22

J.C. ON BEHALF OF J.C.,

Petitioner,

ON REMAND

OAL DKT. NO.: EDU 02441-22

vs.

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

Respondent.

J.C., petitioner, pro se appearing on the papers pursuant to N.J.A.C. 1:1-14.8

Stephen R. Fogarty, Esq., for respondent (Fogarty & Hara, attorney) appearing
on the papers pursuant to N.J.A.C. 1:1-14.8

Record Closed: August 12, 2022

Decided: August 16, 2022

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner appealed 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, under OAL Docket No. EDU 02441-22.

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).

The undersigned issued an Initial Decision, dated June 13, 2022, wherein I determined that the Petitioner failed to sustain her burden of proof that she was domiciled in Closter from February 10, 2022 through April 27, 2022, and therefore, J.C. was not entitled to a free public education in the Closter District.

The matter was remanded in accordance with the Final Decision of the Acting Commissioner of Education, dated July 13, 2022, wherein the Acting Commissioner concurred with the Initial Decision in that the Petitioner failed to sustain her burden of proof, but remanded the same to calculate tuition in accordance with N.J.S.A. 18A:38-1b.

In response to the Final Decision, Respondent submitted the Certification of Floro M. Villanueva, Jr., Business Administrator/Board Secretary for the Closter School District, containing Exhibits A and B.

Petitioner was advised, via email dated July 28, 2022, that any submission she intended to make would be due on or before August 12, 2022. She was also advised in said email there would not be an additional hearing. No submission was made by Petitioner. The record closed August 12, 2022.

ISSUE ON REMAND

What are the number of days of ineligible attendance by J.C.; and, what is the proper amount of tuition reimbursement due Respondent in accordance with N.J.S.A. 18A:38-1b.

FINDINGS OF FACT

From February 10, 2022, the date the District notified J.C.'s parents that the student was not entitled to a free public education in the District, to and including April 26, 2022, the last day J.C. was enrolled in the District, there were 43 school days at Hillside Elementary School. (Exhibit A, Villanueva Certification)

The annual tuition rate for the 2021-2022 school year was \$15,900.00. (Exhibit B, Villanueva Certification)

1/190 of the total annual tuition rate of \$15,390.00 equals \$85.50. This is the per diem tuition rate. Said amount multiplied by 43 days of ineligible attendance equals \$3,676.50. This is the amount of reimbursement due the District from Petitioner.

LEGAL ANALYSIS AND CONCLUSION

N.J.S.A. 18A:38-1b(1) states in pertinent part: Tuition shall be 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 and shall be collected in the manner in which orders of the commissioner are enforced.

In the instant matter, through the Certification of Floro M. Villanueva, Jr., it is established that the total tuition for the 2021-2022 school year was \$15,900.00. 1/180 to the total annual per pupil cost for said school year equals \$85,50. The number of ineligible days of attendance equal 43. The total amount of tuition to be reimbursed is therefore \$3,676.50.

ORDER

It is **ORDERED** that Respondent is entitled to tuition reimbursement in the amount of \$3,676.50; 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.



August 16, 2022

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Petitioner:

None

For Respondent:

None

List of Exhibits

For Petitioner:

None

For Respondent:

Certification of Floro M. Villanueva, Jr., with Exhibit A (Hillside Elementary School Calendar) and Exhibit B (annual tuition rate for school year 2021-2022)