

124-23
OAL Dkt. No. EDU 00212-23
Agency Dkt. No. 371-12/22

New Jersey Commissioner of Education
Final Decision

T.C., on behalf of minor child, D.R.H., Jr.,

Petitioner,

v.

Board of Education of the City of Rahway,
Union 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 or any person having custody of her minor child was a domiciliary of Rahway during the 2022-2023 school year. The Commissioner further concurs with the ALJ's conclusion that D.R.H., Jr. was, therefore, not entitled to a free public education in Rahway'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 Rahway. Therefore, the Rahway Board of Education (Board) is entitled to tuition reimbursement in the

amount of \$9,803.13¹ for the period from the beginning of the 2022-2023 school year through March 24, 2023, during which time petitioner's minor child was ineligible to attend school in Rahway.

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 9,803.13 for the period from the beginning of the 2022-2023 school year through March 24, 2023, for tuition costs incurred during the time period in which the minor child was ineligible to attend school in Rahway. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


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

Date of Decision: April 24, 2023
Date of Mailing: April 26, 2023

¹ This calculation is based on 127 school days of ineligible attendance at a tuition rate of \$77.19 per day. The Commissioner notes that these figures were derived from testimony presented to the ALJ during the hearing. However, a transcript of the testimony was not provided to the Commissioner, nor did the record contain any certification verifying the tuition rate or number of days of ineligible attendance. Therefore, the Commissioner relies on the ALJ's findings of fact.

² 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

OAL DKT. NO. EDU 00212-23

AGENCY DKT. NO. 371-12/22

T.C. O/B/O MINOR CHILD D.R.H.,JR.

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY OF RAHWAY

UNION COUNTY,

Respondent.

T.C., pro se petitioner

Margaret Miller, Esq., for respondent (Weiner Law Group)

Record Closed: March 20, 2023

Decided: March 24, 2023

BEFORE **JOANN LASALA CANDIDO**, ALAJ:

Petitioner, T.C, the mother of minor child D.R.H., appeals the determination of the Board of Education of the City of Rahway School District (the “Board”) that D.R.H. did not reside within the Rahway school district in the 2022–2023 school year and that tuition reimbursement is required. The Board alleges that the minor child D.R.H. was not residing at the address provided by the petitioner and seeks repayment of tuition.

On December 2, 2022, the Board notified T.C. that her child was ineligible to continue to attend school within the district. It's Initial Determination of Ineligibility was provided to T.C. on October 12, 2022. The petitioner filed a notice of appeal on or about December 14, 2022, and the Board filed an answer on December 29, 2022. On or about January 5, 2023, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case. N.J.S.A. 52:14b-1 to N.J.S.A. 52:14F-1 to 13. The hearing was held via Zoom on March 20, 2023, on which date the record closed.

At issue is whether D.R.H. was entitled to be enrolled in the district for purposes of receiving a thorough and efficient public education free of charge for the 2022–2023 school year, pursuant to N.J.S.A. 18A:38-1.

Based upon the papers submitted as of the hearing date and the supplemental submission by respondent as to tuition calculations, as well as the testimony of T.C. and Rahway Board of Education attendance officer William White and Board Secretary Stephen Fried, I **FIND** the following **FACTS**.

D.R.H. has been a student at Grover Cleveland since Kindergarten and is currently in the sixth grade. T.C. resides in the State of Delaware since November 27, 2021. Her mother had applied for temporary guardianship of D.R.H. On September 13, 2022, Attendance Officer White went to the home of T.C.'s Aunt Joselyn Ortiz to confirm that D.R.H. resides at her address with his grandmother Mrs. Fitzgerald. White was advised that there was not room in her residence for the two of them and that the grandmother resides in Roselle. T.C. submitted a Temporary Guardianship Affidavit filed with the Superior Court on September 15, 2022, with no attached signed Court Order. It requested Guardianship to commence on July 1, 2023.

To date, Mrs. Fitzgerald has not submitted documents of proof of residence in Rahway. Neither she nor Ms. Ortiz testified.

The respondent is seeking tuition for the child for the 2022-2023 school year at a daily rate of \$77.19 for 127 days (through today, March 24, 2023), for a total cost of \$9803.13.

N.J.S.A. 18A:38-1(a) provides that every person in New Jersey between the ages of five and twenty is entitled to a free education if they are "domiciled within the school district." "Domicile" means a permanent home from which a person does not intend to move. Lipman v. Rutgers-State Univ. of N.J., 329 N.J. 16 A-5475-18 Super. 433, 444 (App. Div. 2000). A child's domicile is normally that of his parents. Roxbury Twp. Bd. of Educ. v. West Milford Bd. of Educ., 283 N.J. Super. 505, 521-22 (App. Div. 1995).

However, "[i]f 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 . . . , the superintendent or administrative principal may apply to the board of education for the removal of the child." N.J.S.A. 18A:38-1(b)(2). The parents may contest a local school board's decision regarding the student's right to attend school in the district to the Commissioner of Education and "shall have the burden of proof by a preponderance of the evidence" to prove domicile in the school district. N.J.S.A. 18A:38-1(b)(2). The State Board of Education has promulgated various rules implementing N.J.S.A. 18A:38-1 and governing student domicile and eligibility to attend school. N.J.A.C. 6A:22-1.1 to -6.3.

The record is clear that petitioner's child was not domiciled in Rahway with his grandmother. The aunt, Ms. Ortiz advised the District that there was no room in her home and the grandmother, Ms. Fitzgerald did not present any documents proving she resided at that Rahway address. I therefore **CONCLUDE** that petitioner has failed in her burden to prove by a preponderance of the evidence that her child was domiciled in Rahway. Tuition is sought by the Board for the period of ineligible attendance.

A school district may seek a child's disenrollment from its schools and seek tuition reimbursement if a child is attending but domiciled in another district. N.J.S.A.

18A:38-1(b)(2). The parents or legal guardian of the child are entitled to a hearing where they have the burden of proving domicile by a preponderance of the evidence, which occurred today.

Based on the foregoing, I **CONCLUDE** that the respondent is entitled to tuition in the amount of \$77.19 per day for a total of \$9803.13.

ORDER

I **ORDER** that the decision of respondent City of Rahway Board of Education that D.R.H. was not eligible for a free public education in the District during the 2022-2023 school year is **AFFIRMED** and the pro se residency appeal of petitioner T.C. on behalf of D.R.H. is **DISMISSED**.

Further, I **ORDER** that petitioner shall pay respondent tuition in the amount of \$9803.13.

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.



March 24, 2023

DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

March 24, 2023

Date Mailed to Parties:

March 24, 2023

ljb

EXHIBITS

For petitioner:

None

For respondent:

- R-1 Follow-Up Residency Investigation Summary dated November 8, 2022
- R-2 Temporary Guardianship Form and Affidavit
- R-3 E-Mail Correspondence
- R-4 Two-part Affidavit Student
- R-5 First page completed of Affidavit Student
- R-6 Letter to T.C. from William White dated October 12, 2022
- R-7 Notice of Initial Determination of Ineligibility dated October 12, 2022
- R-8 E-Mail Correspondence
- R-9 Tuition sought from District