

New Jersey Commissioner of Education

Final Decision

D.E. and J.E., on behalf of minor child, R.E.,

Petitioners,

v.

Board of Education of Ramapo Indian Hills
Regional School District, Bergen County,

Respondent.

Synopsis

Petitioners filed a pro se petition challenging the determination of the respondent Board that their minor child was not eligible to receive a free public education in the Ramapo Indian Hills Regional School District. The Board sought reimbursement of tuition from petitioners, asserting that R.E. was not domiciled within any of the municipalities in the Ramapo Indian Hills Regional School District (District) between October 13, 2022 and the end of the 2022-2023 school year. Petitioners did not appear at the May 22, 2023 hearing in this matter and offered no explanation for their failure to appear. The record closed on June 2, 2023 after the filing of the Board's post-hearing brief.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A. 18A:38-1*, public schools are free to any persons over five and under twenty five years of age who are domiciled within the school district; pursuant to *N.J.A.C. 6A:22-6.2.*, if a student does not have a right to attend the school district, the Commissioner may assess tuition; in this case, R.E. had been attending Indian Hills High School while petitioners resided in Oakland, one of the municipalities served by the respondent district, prior to the 2022-2023 school year; however, the family left Oakland in September 2021 due to a foreclosure and petitioners subsequently moved in with relatives in Hawthorne; the Board recognized R.E. as homeless during the 2021-2022 school year and permitted R.E. to remain enrolled at Indian Hills High School pursuant to the McKinney-Vento Homeless Assistance Act; the Board contends that petitioners continue to reside in Hawthorne; in October 2022 the Bergen County Executive County Superintendent determined that the petitioners and R.E. had become domiciled in Hawthorne and were entitled to a free education in Hawthorne schools for the remainder of the school year; nonetheless, R.E. continued to attend Indian Hills High School; petitioners failed to appear at a hearing in this matter on May 22, 2023 and offered no explanation for their failure to appear. The ALJ concluded that petitioners had abandoned their appeal. Accordingly, the ALJ dismissed the petition, granted the Board's counterclaim for tuition, and ordered petitioners to reimburse the Board for tuition at a rate of \$107.92 per day for the period beginning October 13, 2022 to the date R.E. was disenrolled from the District.

Upon review, the Commissioner concurred with the ALJ findings and conclusions and adopted the Initial Decision of the OAL as the final decision in this matter. The Commissioner determined that there were 155 school days between October 13, 2022 and the end of the 2022-2023 school year and ordered petitioners to reimburse the Board in the amount of \$16,727.60 for the period of R.E.'s ineligible attendance in the Ramapo Indian Hills Regional School District.

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.

207-23

OAL Dkt. No. EDU 01738-23

Agency Dkt. No. 322-11/22

New Jersey Commissioner of Education

Final Decision

D.E. and J.E., on behalf of minor child, R.E.,

Petitioners,

v.

Board of Education of Ramapo Indian Hills
Regional School District, Bergen County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioners abandoned their appeal and failed to sustain their burden of establishing that they were domiciled within any of the municipalities in the Ramapo Indian Hills Regional School District (District) between October 13, 2022 and the end of the 2022-2023 school year. The Commissioner further concurs with the ALJ's conclusion that R.E. was, therefore, not entitled to a free public education in the District during that time.

Pursuant to *N.J.S.A. 18A:38-1b*, the Commissioner shall assess tuition against petitioners for the time period during which R.E. 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* (emphasis added). A certification submitted by the District's

Business Administrator indicates that the per diem tuition rate is \$107.92. However, that certification does not provide the number of days of ineligible attendance, nor did the ALJ make any findings of fact on that issue. Although that information should have been provided during the OAL proceedings, because the Business Administrator's certification included a copy of the District's calendar for the 2022-2023 school year, the Commissioner is able to make a finding regarding the number of days of ineligible attendance without the need for a remand to the OAL. The Commissioner finds that there were 155 school days between October 13, 2022 and the end of the 2022-2023 school year. Therefore, the Board is entitled to tuition reimbursement in the amount of \$16,727.60 for the period from October 13, 2022 through the end of the 2022-2023 school year, during which time R.E. was ineligible to attend school in the District.

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 \$16,727.60 for the time period from October 13, 2022 through the end of the 2022-2023 school year, for tuition costs incurred during the period in which R.E. was ineligible to attend school in the District. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


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

Date of Decision: July 12, 2023
Date of Mailing: July 13, 2023

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

OAL DKT. NO. EDU 01738-23

AGENCY DKT. NO. 322-11/2

D.E. AND J.E. ON BEHALF OF R.E.,

Petitioners,

v.

RAMAPO INDIAN HILLS REGIONAL BOARD

OF EDUCATION, BERGEN COUNTY,

Respondent.

No appearance by D.E. and J.E., petitioners, pro se

Caitlin W. Lundquist, Esq., for respondent (Busch Law Group, attorneys)

Record Closed: June 2, 2023

Decided: June 22, 2023

BEFORE **SUSANA E. GUERRERO, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, parents of minor child R.E., challenged the respondent Board of Education's residency determination. In its counterclaim, the respondent Board of Education of the Ramapo Indian Hills Regional High School District (Respondent,

Ramapo Indian Hills) seeks reimbursement of tuition from petitioners, asserting that R.E. was not domiciled within the school District during the 2022–2023 school year.

This matter was transmitted to the Office of Administrative Law (OAL), under caption D.E. on behalf of minor children, A.E., E.E., C.E., and R.E. v. Board of Education of the Borough of Oakland, Bergen County and Board of Education of the Ramapo Indian Hills Regional High School District, Bergen County, under OAL docket number EDU 11519-22, where it was filed on December 21, 2022. At the initial prehearing telephone conferences, the parties requested that the matter be bifurcated since the petitioners' four children attended two different school districts. By order dated March 1, 2023, I bifurcated the matter and ordered that the matter against the Ramapo Indian Hills Regional High School District proceed under D.E. and J.E. on behalf of minor child R.E. v. Board of Education of the Ramapo Indian Hills Regional High School District, Bergen County, with OAL docket number EDU 01738-23, and that D.E. and J.E. on behalf of minor children, A.E., EE., and C.E. v Board of Education of the Borough of Oakland, Bergen County proceed under OAL docket number EDU 11519-22.

The petitioners failed to participate in scheduled telephone conferences. A hearing was initially scheduled for April 28, 2023, but adjourned. On or around April 28, 2023, the parties were notified that a peremptory hearing date was scheduled for May 22, 2023. As the petitioners did not appear for the hearing, an ex parte hearing took place at the OAL in Newark, New Jersey on that date, and the record remained open to allow the respondent an opportunity to submit a post-hearing brief. The record closed on June 2, 2023, when the post-hearing brief was filed.

FINDINGS OF FACT

Having reviewed and considered the uncontested testimony of Thomas Lambe, School Business Administrator and Board Secretary for Ramapo Indian Hills Regional High School District, at the hearing, the documentary evidence presented at the hearing, the petition, counterclaim, and post-hearing briefs submitted, I **FIND** the following **FACTS** in this matter:

The petitioners did not appear for the hearing, and there is no indication that they did not receive notice of the hearing. The petitioner never called or wrote to the OAL explaining their failure to appear for the prehearing conferences or the hearing. I therefore **FIND** that the petitioners have abandoned their appeal.

Ramapo Indian Hills is a regional public school district consisting of two high schools serving students from Oakland and two other towns in Bergen County. Prior to the 2022–2023 school year, the petitioners and their children, including R.E., resided in Oakland and attended the Oakland school district schools and Ramapo Indian Hills. Specifically, R.E. has been attending Indian Hills High School, one of the two high schools in the Ramapo Indian Hills Regional School District. The petitioners, and R.E., left Oakland in or around September 1, 2021, apparently due to a foreclosure, and moved in with relatives in Hawthorne, a town outside the Ramapo Indian Hills School District. During the 2021–2022 school year, Ramapo Indian Hills considered R.E. homeless and allowed R.E. to remain enrolled at the high school for the entire school year. The District asserts that R.E. continues to reside in Hawthorne. There is no evidence that the petitioners or R.E. were ever domiciled in Oakland, or in any of the other towns within the regional school district, during the 2022–2023 school year.

When the petitioners represented at the start of the 2022–2023 school year that they were still not residing in Oakland, in or around September 16, 2022, the Executive County Superintendent was asked to make a homeless determination for R.E. By letter dated October 13, 2022, the Executive County Superintendent determined that R.E. and R.E.'s siblings were not homeless and that they were domiciled in Hawthorne and entitled to a tuition-free education in the Hawthorne School District for the remainder of the school year. R.E., however, continued to attend Indian Hills High School throughout the 2022–2023 school year.

Lambe sent the petitioner a letter dated October 28, 2022 informing them that, given the Executive County Superintendent's decision, R.E. should register as a student in the Hawthorne School District and that R.E. cannot continue to attend school at Indian Hills High School. Lambe informed the petitioners that they may request a hearing before the Board to challenge this determination. He also informed them that they may be

responsible for a tuition assessment at the rate of \$148.49 per day for each day of ineligible enrollment. Lambe described this tuition rate as that applying to students, including R.E., who are receiving special education services.

The parents requested a hearing before the Board but failed to appear. On November 14, 2022, the Board voted to disenroll the students from the District based on their non-resident status. On November 15, 2022, the Board sent the petitioners a letter advising that R.E. is not entitled to a tuition-free education in the District and that since they did not appear for the Board hearing, R.E. was to be disenrolled effective twenty-one days from the date of this notice. The petitioners were also informed that they would be assessed tuition at the rate of approximately \$107.92 for each day during the period of ineligibility and prorated from the date of enrollment. According to Lambe, this rate reflects the “regular tuition rate,” that applies to students who are not classified.

Petitioners filed the subject petition challenging the Board’s decision on or about November 20, 2022. In that petition, D.E. acknowledged that the family does not reside in Oakland.

During the 2022–2023 school year, R.E. attended school at Indian Hills High School. The respondent seeks tuition reimbursement retroactive to October 13, 2022, the date that the Executive County Superintendent determined that R.E. was not eligible for a tuition-free education at Ramapo Indian Hills.

At the conclusion of the hearing, the respondent was asked to submit a Certification prepared by Lambe with the per-diem tuition rate applicable to a general education student attending school in the District. In that Certification, Lambe confirmed that the per pupil tuition rate was \$107.92 per day for the 2022–2023 school year, which is the same rate reflected in the November 15, 2022 letter.

LEGAL ANALYSIS AND CONCLUSIONS

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.

Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is that of his or her parent, custodian or guardian. P.B.K. o/b/o minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super 419, 427 (App. Div. 2001). Where the local board determines that a child is not properly domiciled in its district, N.J.S.A. 18A:38-1(b)(2) provides a right of appeal to the parents.

Here, the respondent produced the District’s School Business Administrator and Board Secretary, Lambe, who testified and provided a signed certification concerning R.E.’s residency status and results of the residency determination, her attendance at Indian Hills High School, and the per pupil cost to attend in the 2022–23 school year. I accept his testimony as fact.

N.J.A.C. 6A:22-6.2(a) authorizes the Commissioner of Education to assess tuition for non-resident students. It states:

If in the judgement of the Commissioner the evidence does not support the claim of the resident, he shall assess the resident tuition for the student prorated to the time of the student’s ineligible attendance in the school district. 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.

Here, the petitioners have failed to appear for the scheduled hearing, without explanation, and there is no testimony or other evidence challenging the District's residency determination or tuition cost. I **CONCLUDE** that since the petitioners have abandoned their appeal, their Petition should be dismissed.

Based upon the facts adduced at the hearing and Lambe's Certification, I **CONCLUDE** that the petitioners and R.E. were not domiciled within the Ramapo Indian Hills Regional School District during the 2022–2023 school year, and that R.E. is not entitled to a free public education there. I also **CONCLUDE** that the Board is entitled to reimbursement, retroactive to October 13, 2022, for tuition calculated at the rate of \$107.92 per day. October 13, 2022 is the day when the Executive County Superintendent determined that R.E. was not a homeless student, that she was domiciled in Hawthorne, and that she was not eligible for a tuition-free education in the District. The \$107.92 daily rate is the rate applicable to a general education student attending school in the District, and it is the rate used to calculate the total annual per pupil cost to the District. Despite the fact that R.E. may receive special education services, for purposes of seeking tuition reimbursement from a non-resident student, the District is only entitled to reimbursement based on the per pupil cost, not any additional special education costs that are not included in that figure.

ORDER

It is hereby **ORDERED** that the petitioners' residency appeal is **DISMISSED** as a consequence of their failure to appear at the hearing without providing any explanation for the non-appearance, and that R.E. be disenrolled from the District. It is further **ORDERED** that respondent's counterclaim seeking tuition reimbursement is **GRANTED**. It is further **ORDERED** that the petitioners reimburse the respondent, at a daily tuition rate of \$107.92, for the period beginning October 13, 2022 to the date R.E. is disenrolled from the District.

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 22, 2023
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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APPENDIX

Witnesses

For Petitioners:

None

For Respondent:

Thomas Lambe

Exhibits

For Petitioner:

None

For Respondent:

- R-1 Letter from Executive County Superintendent to Board's Superintendent, October 13, 2022
- R-2 Notice of initial Determination of Eligibility, October 28, 2022
- R-3 Email correspondence with petitioner regarding Board hearing, November 2022
- R-4 Board Resolution approving R.E.'s disenrollment, November 14, 2022
- R-5 Notice of Final Ineligibility Determination, November 15, 2022, with enclosures