

346-25
OAL Dkt. No. 09347-25 (07408-24 on remand)
Agency Dkt. No. 127-5/24

New Jersey Commissioner of Education
Final Decision

E.M., on behalf of minor children, E.B. and Z.B.,

Petitioner,

v.

Board of Education of the Township of Mount
Olive, Morris 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.

The Commissioner previously concluded that petitioner failed to sustain her burden of establishing that her children, E.B. and Z.B., were domiciled in the Mount Olive school district between December 1, 2023, and the end of the 2023-2024 school year. *E.M., on behalf of minor children, E.B. and Z.B. v. Bd. of Educ. of the Twp. of Mt. Olive, Burlington Co.*, Commissioner Decision No. 269-25R (May 23, 2025). However, because the record lacked information regarding the number of days of ineligible attendance by the children, the Commissioner was unable to assess tuition pursuant to *N.J.S.A. 18A:38-1b*. Accordingly, the Commissioner remanded the matter to the OAL.

On remand, the ALJ accepted a letter from the Board regarding the number of days of ineligible attendance and the per diem tuition rate, and supplemented the Initial Decision to

include information testified to by the Board's witnesses during the December 2, 2024 hearing. The Administrative Law Judge (ALJ) found that E.B. was enrolled in the Board's schools for 121 days from December 1, 2023 to the end of the 2023-2024 school year, and that the tuition rate for E.B. was \$112.95 per day, for a total due of \$13,666.95. The ALJ also found that Z.B. was enrolled in the Board's schools for seven months from December 1, 2023 to the end of the 2023-2024 school year, at a cost of \$300 per month, for a total due of \$2,100. The ALJ concluded that petitioner owed the Board tuition in the amount of \$15,766.95.

Upon review, the Commissioner concurs with the ALJ's findings and conclusions, for the reasons stated in the Initial Decision.

Accordingly, the Initial Decision on remand is adopted. Petitioner shall pay the Board \$15,766.95 for E.B. and Z.B.'s costs incurred during the 2023-2024 school year.

IT IS SO ORDERED.¹


COMMISSIONER OF EDUCATION

Date of Decision: July 11, 2025
Date of Mailing: July 14, 2025

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 09347-25

AGENCY DKT. NO. 127-5/24

(ON REMAND NO. EDU 07408-24)

E.M. ON BEHALF OF MINOR

CHILDREN, E.B. AND Z.B.,

Petitioner,

v.

BOARD OF EDUCATION OF THE

TOWNSHIP OF MOUNT OLIVE,

MORRIS COUNTY,

Respondent.

No appearance by E.M., petitioner, pro se

John G. Geppert, Jr., Esq., for respondent (Scarinci Hollenbeck, LLC, attorneys)

Record Closed: June 9, 225

Decided: June 11, 2025

BEFORE **DANIEL J. BROWN, ALJ:**

STATEMENT OF THE CASE

The petitioner, parent of minor children, E.B. and Z.B., challenges the respondent's residency determination. In its counterclaim, the respondent seeks reimbursement of

tuition from the petitioner, asserting that the petitioner did not establish that E.B. and Z.B. were domiciled within the school district from December 1, 2023 to the end of the 2023–2024 school year. In a residency appeal, under N.J.S.A. 18A:38-1(b)(2), the parent has the burden of proof to show by a preponderance of the evidence that the parent’s minor child or minor children were domiciled in the school district. Has the petitioner shown by a preponderance of the evidence that E.B. and Z.B. were domiciled in the school district from December 1, 2023, to the end of the 2023 – 2024 school year? No. The petitioner has provided no testimony or documentary evidence to show that E.B. and Z.B. were domiciled in the school district during that time.

PROCEDURAL HISTORY

In the 2023 – 2024 school year, E.B. was a first-grade student at Chester M. Stephens elementary school (CMS). Z.B. was enrolled in the afternoon pre-kindergarten program as a classified student at Mountain View elementary school. In early February 2024, the respondent sent the petitioner a letter to the address provided by the petitioner, 57 Village Green, Apartment, Unit G, Budd Lake, N.J. 07828. The letter was returned to the respondent with no forwarding information. As a result, the respondent commenced a residency investigation concerning E.B. and Z.B. The investigation determined that E.B. and Z.B. were moved out of the school district by the petitioner on December 1, 2023, and resided at 106 Main Street, Succasunna, New Jersey 07876. On March 28, 2024, the respondent notified the petitioner of the results of the investigation and of a board hearing regarding the residency of E.B. and Z.B. to be held on April 10, 2024. On April 8, 2024, the petitioner submitted a form to the respondent indicating that she and her children faced unexpected homelessness due to a rent increase during the renewal of the petitioner’s lease. On the form, the petitioner indicated she was staying with her children in a home or apartment doubling up with family, friends or other relatives due to hardship or similar reasons. On April 10, 2024, the respondent held a hearing that was participated in by the petitioner. Following the hearing, the respondent concluded that E.B. and Z.B. were not domiciled in the school district as of December 1, 2023, and that the children were disenrolled from the district.

On April 18, 2024, the respondent sent correspondence to the Morris County Executive Superintendent of Schools (Executive Superintendent) regarding whether E.B. and Z.B. were homeless and should therefore attend Roxbury Township schools. On April 26, 2024, the Executive Superintendent sent a letter to the respondent's superintendent of schools that concluded that E.B. and Z.B. were not homeless.

On May 6, 2024, the petitioner filed a residency appeal on behalf of her children, and, on May 23, 2024, respondent filed an answer and counter claim for tuition. The tuition that the respondent sought for E.B. was \$13,666.95 for 121 days. The tuition that the respondent sought for Z.B. was \$2,100 for 7 months. On May 24, 2024, the New Jersey State Department of Education transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The OAL received the case on the same day. The case was assigned to me on June 5, 2024.

On June 19, 2024, July 25, 2024, October 22, 2024, and October 30, 2024, I held prehearing conferences under N.J.A.C. 1:1-13.1 to discuss hearing availability dates, the nature of the proceeding, the issues to be resolved, and any unique evidentiary problems. I also permitted additional time for discovery. During a telephone conference with the parties on October 20, 2024, I scheduled the hearing for December 2, 2024, and December 3, 2024. I also granted the petitioner's request to appear via zoom for the hearing, but I required the respondent and the respondent's witnesses to appear in person for the hearing. On December 1, 2024, the petitioner sent an email to me requesting an adjournment of the hearing that was scheduled to begin the next day because she was scheduled to start a new job. I denied the adjournment request.

I conducted the hearing on December 2, 2024. The petitioner did not appear and did not contact me to explain her failure to appear. As the petitioner did not appear for the hearing, an ex parte hearing took place at the OAL in Newark, New Jersey on that date. At the hearing, the respondent presented testimony and exhibits. The respondent requested the opportunity to file a written summation, and I approved that request. I gave the parties until February 3 to file written summations. On February 3, 2025, I received

the respondent's written summation. The petitioner failed to submit a written summation and failed to file an extension of time to do so. I kept the record open until February 5 to give the petitioner additional time to file a written summation or request additional time to do so. After receiving no communication from the petitioner, I closed the record on February 5, 2025. On March 24, 2025, I requested an extension of time to file an initial decision, which was approved.

I issued an initial decision on April 29, 2025. The Commissioner issued a final decision dated May 23, 2025. The Commissioner's final decision remanded the matter back to me to obtain a certification from respondent business administrator or other employee regarding the per diem rate or the number of days of ineligible attendance. The Final Decision of the Commissioner provided that if witnesses for the Board testified regarding the per diem rate and the number of days of ineligible attendance for each child, I could file a revised initial decision documenting that testimony and forgo obtaining a certification from the respondent. On May 27, 2025, counsel for the respondent provided me with a letter which noted that each witness for the respondent testified that E.B.'s calculation of tuition was based on the per diem rate of \$112.95 per day multiplied by 121 days of ineligible school attendance, amounting to \$13,666.95 in total. The letter from counsel for the respondent also notes that each of the witnesses for the respondent testified that Z.B. was not charged a per-diem rate for tuition because he was a classified preschool student at the time of his ineligibility. Z.B.'s tuition was based on a transportation fee of \$300 per month for 7 months, which was the period of Z.B.'s ineligible attendance. I agree with counsel for the respondent that each witness testified concerning the per diem rate for E.B. and the monthly rate for Z.B. Each witness for the respondent also testified concerning the number of days of ineligible attendance for each child. I have revised my initial decision based up my review of the letter for counsel for the respondent and my recollection of the testimony of witnesses for the respondent.

FINDINGS OF FACT

Having reviewed and considered the testimony and the documentary evidence presented at the hearing, I **FIND** the following **FACTS** in this matter:

Abandonment

The petitioner requested to appear for the hearing via zoom and that request was approved. Despite this, the petitioner did not appear for the hearing. The petitioner was afforded proper notice of the hearing date by email and regular mail. The petitioner requested an adjournment of the hearing on the night before the hearing via email because she was scheduled to start a new job. The adjournment request was denied, and the petitioner was notified of the denial of the adjournment request via email. There is no indication that the petitioner did not receive notice of the denial of the adjournment request. The petitioner failed to submit a written summation by the due date or to request an extension of time to do so. In fact, the petitioner has failed to contact the OAL since her adjournment request was denied on December 1, 2024, the day before the hearing. I therefore **FIND** that the petitioner has abandoned her appeal.

The Residency Investigation

The respondent commenced a residency investigation regarding E.B. and Z.B. after a letter sent to the petitioner by the respondent at the in-district address the petitioner provided to the respondent was returned without forwarding information. The investigator started his investigation on February 6, 2024, and concluded it on March 10, 2024. The investigator discovered that E.B. was always dropped off and picked up at school by his mother or his aunt, even though he had an assigned school bus. Additionally, the property manager for the Village Green Apartments informed the investigator that the petitioner and her children had moved from the Apartment Complex on December 1, 2023. The investigator learned that the petitioner informed the United States Post Office (USPS) that her new address was 106 Main Street, Succasunna, N.J. 07876. Additionally, the investigator learned from a social media post published by the petitioner that the petitioner changed her driver's license to reflect her new address. From the same post, the investigator learned from that the petitioner moved in with her sister and brother-in-law at 106 Main Street, Succasunna to help care for her brother-in-law who had suffered a stroke. The investigator observed that this residence had two doors that were used to enter or exit the residence. The investigator observed that the petitioner and her children

always entered or exited through one door while the petitioner's sister and brother-in-law always used the other door.

On the afternoon of February 6, 2024, the investigator observed that E.B. was picked up from CMS school by a white Toyota Rav-4. The investigator followed the vehicle and observed it pulling into a driveway at 106 Main Street in Succasunna. Once the Toyota Rav-4 was parked, the investigator observed the petitioner, E.B. and Z.B. exit the vehicle and enter the residence. On the mornings of February 7, 2024, February 8, 2024, and March 1, 2024, the investigator observed the petitioner, Z.B., and E.B. exit the residence at 106 Main Street and enter the Rav-4. On each day, the investigator followed the Rav-4 as it drove to the Goddard School in Flanders, New Jersey and dropped off Z.B. at the school. The Rav-4 then proceeded to CMS school and dropped E.B. off at that school.

On the mornings of February 9, 2024, February 15, 2024, February 21, 2024, February 22, 2024, March 4, 2024, March 7, 2024, and March 8, 2024, the investigator observed the petitioner, Z.B., and E.B. exit the residence at 106 Main Street in Succasunna and enter the Rav-4. On each day, the investigator followed the Rav-4 as it drove to CMS school and dropped E.B. off at that school. On the mornings of February 12, 2024, and March 5, 2024, the investigator observed the petitioner driving the white Rav-4 arrive at CMS school and drop E.B. off at that school. On the late evenings of February 13, 2024, February 19, 2024, February 25, 2024, February 29, 2024, March 3, 2024, March 9, 2024, and March 10, 2024, the investigator observed the white Rav-4 parked in the driveway of the residence or on the street near the residence at 106 Main Street in Succasunna. On the morning of February 14, 2024, the investigator observed the petitioner exit the residence at 106 Main Street in Succasunna on three occasions and go to the white Rav-4 parked in the driveway to get something from the vehicle or put something in the vehicle. The petitioner then drove Z.B. to the Goddard school in Flanders and dropped Z.B. off at that school. On the afternoon of February 18, 2024, the investigator observed the petitioner exit the residence at 106 Main Street in Succasunna, enter the white Rav-4 parked in the driveway and drive away.

On the morning of February 26, 2024, the investigator observed the petitioner, and another female exited the residence located at 106 Main Street in Succasunna. The other female entered a white Honda Civic that was parked in the driveway and drove away. The petitioner entered the white Rav-4 parked in the driveway and drove away. On the mornings of February 27, 2024, and February 28, 2024, the investigator observed the petitioner, Z.B., and E.B. exit the residence at 106 Main Street in Succasunna, enter the Rav-4, and drive away. On each day, the investigator followed the Rav-4 as it drove to the Goddard School in Flanders, New Jersey and dropped off Z.B at the school.

Based on his investigation, the investigator concluded that the petitioner was living in Roxbury with a fixed, regular and adequate residence. I agree.

Tuition

The Petitioner filed the instant appeal challenging the respondent's decision that her children were not domiciled in the district from December 1, 2023, to the end of the 2023- 2024 school year. The petitioner's children, E.B. and Z.B. continued to attend schools in the respondent's district from December 1, 2023, to the end of the 2023- 2024 school year despite being moved out of district as of December 1, 2023. The Petitioner has failed to present any evidence that her children were domiciled in any of the towns within the Mt. Olive school district despite being given notice and an opportunity to do so. As no evidence has been presented that E.B. and Z.B. were domiciled in the school district from December 1, 2023, to the end of the 2023-2024 school year, the Respondent seeks tuition reimbursement for both children.

Each witness for the respondent testified that E.B.'s calculation of tuition was based on the per diem rate of \$112.95 per day multiplied by 121 days of ineligible school attendance, amounting to \$13,666.95 in total. Additionally, each of the witnesses for the respondent testified that Z.B. was not charged a per-diem rate for tuition because he was a classified preschool student at the time of his ineligibility. Instead, each of the witnesses for the respondent testified that Z.B.'s tuition was based on a transportation fee of \$300 per month for 7 months, which was the period of Z.B.'s ineligible attendance.

Based upon the testimony of each of the witnesses for the respondent, the respondent submits that total tuition for E.B., calculated at a per diem rate of \$112.95 per day for 121 days amounts to \$13,666.95. I agree. Again, based upon the testimony of each of the witnesses for the respondent, the respondent submits that the total tuition for Z.B. calculated at a monthly rate of \$300 per month for 7 months is \$2,100. I agree.

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).

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.

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.

On appeal, the petitioner has the burden of proof to show by a preponderance of the evidence that their minor child was domiciled in the school district. N.J.S.A. 18A:38-1(b)(2). Here, the petitioner has failed to appear for the scheduled hearing after being permitted to appear remotely via zoom. As a result, I **CONCLUDE** that the petitioner has abandoned her appeal, and the petition should be dismissed.

Based upon the facts adduced at the hearing and the exhibits introduced by the respondent, I **CONCLUDE** that the petitioner has not demonstrated that E.B. and Z.B. were domiciled in the school district from December 1, 2023, to the end of the 2023-2024 school year. I also **CONCLUDE** that the respondent is entitled to tuition reimbursement in the amount of \$13,666.95 for E.B. and \$2,100 for Z.B. for total tuition reimbursement of \$15,766.95

ORDER

I **ORDER** that the petitioner's residency appeal is **DISMISSED** with prejudice. I further **ORDER** that respondent's counterclaim seeking tuition reimbursement in the amount of \$15,766.95 is **GRANTED**.

I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

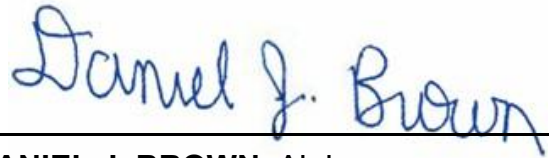
This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton,

New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

June 11, 2025

DATE

A handwritten signature in blue ink that reads "Daniel J. Brown". The signature is written in a cursive, flowing style.

DANIEL J. BROWN, ALJ

Date Received at Agency:

June 11, 2025

Date Mailed to Parties:
dr

June 11, 2025

APPENDIX

Witnesses

For Petitioner:

None

For Respondent:

James Carifi

Sumit Bangia

Exhibits

For Petitioner:

None

For Respondent:

- R-1 Board Policy No. 5111- Eligibility of Resident/ Nonresident students
- R-2 Residency investigation report dated March 11, 2024
- R-3 Notice of residency hearing
- R-4 McKinney Vento Act forms
- R-5 Board Residency Hearing Resolution
- R-6 Supplemental residency investigation report dated May 13, 2024
- R-7 Board Policy No. 5116- Education of Homeless children and youths
- R-8 Notice of Initial Determination of Ineligibility, dated April 16, 2024
- R-9 Request for Homeless pupil determination dated April 18, 2024
- R-10 Homeless pupil determination dated April 26, 2024
- R-11 Letter dated May 27, 2025 from Counsel for Respondent to this tribunal