

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

SUMMARY DECISION

OAL DKT. NO. EDU 16589-17

AGENCY DKT. NO. 241-10/17

**S.H. AND C.H. O/B/O MINOR CHILDREN,
C.H., S.H., AND S.H.,**

Petitioners,

v.

**TOWNSHIP OF ALLOWAY BOARD OF
EDUCATION, SALEM COUNTY**

Respondent.

Jamie Epstein, Esq., for petitioners

Victoria Beck, Esq., for respondent (Parker McGay, P.A., attorneys)

BEFORE **DOROTHY INCARVITO-GARRABRANT**, ALJ:

PROCEDURAL HISTORY

On October 18, 2017, petitioners, S.H. and C.H. filed a Verified Petition of Appeal of the respondent, Alloway Township Board of Education's (BOE), determination that petitioners did not reside within the school district. On November 3, 2017, respondent answered the Verified Petition and filed a cross-petition for tuition reimbursement and costs for three of the petitioners' minor children. On December 22, 2017, respondent filed the instant Motion for Summary Decision in its favor relative to the residency issue and tuition and costs reimbursement, on the grounds that petitioners had sold their home on August 25, 2017, purchased a new home outside respondent's school district, did not own any property within its district, and resided in the district to which they moved.

On November 8, 2017, the Commissioner of the Department of Education transmitted this matter to the Office of Administrative Law (OAL) for a hearing to determine whether petitioners resided outside of respondent's school district and therefore, either had to enroll their children in that school district or enroll their children in respondent's school district and pay tuition for each. On December 22, 2017, respondent filed a Motion for Summary Decision.

On January 8, 2018, a Pre-Hearing Order was entered which established filing deadlines for petitioners' Motion for a Protective Order and respondent's opposition to same. On March 28, 2018, an Order was entered denying petitioners' Motion for a Protective Order. Pursuant to that Order, petitioners' opposition to respondent's December 22, 2017 Summary Decision Motion was required by June 5, 2017. On June 5, 2017, petitioners filed an opposition to the motion. On May 31, 2018, respondent filed a reply to the opposition. On June 1, 2018, petitioners filed a sur-reply to the response.

FACTUAL DISCUSSION

This matter arises out of petitioners' claim that, despite selling their home and purchasing a new residence in another school district, they continue to be domiciled in respondent's school district, and therefore, may continue to enroll their children in respondent's district at no cost.

Based upon a review of the pleadings, and the parties' written submissions and attached exhibits, and drawing all reasonable inferences in favor of the non-moving party, I **FIND as FACT** the following:

Petitioners have three children ages four, seven, and twelve, who have been attending school in respondent's school district.¹ On August 25, 2017, petitioners sold their residence of ten years located at X Neil Court, Alloway Township. Petitioners

¹ Petitioners have an older child, who attends high school, and is not subject to this appeal. It is unclear in which sending district petitioners' older child is registered. It is further unclear if that child's sending district was changed to that in which the XXX Woodstown-Daretown Road residence is located.

voluntarily moved to XXX Woodstown-Daretown Road, Elmer, New Jersey, a property which they purchased prior to the sale of their X Neil Court residence, and which is located outside respondent's school district. Petitioners have resided continuously at the Woodstown-Daretown Road address, since the sale of their residence on August 25, 2017.

The preceding facts were undisputed.

In the instant motion, respondent contended that the petitioners sold their within district, residence at X Neil Court, Alloway Township, and moved out of the school district to Elmer, New Jersey on August 25, 2017. Petitioners did not own or lease a residence in Elmer, when they moved out of the school district to the XXX Woodstown-Daretown Road residence. Petitioners' domicile is located at the Elmer residence, where petitioners return home each day. Petitioners have offered no evidence showing that they are domiciled and reside within the district. Respondent contended that the petitioners' intent to move back into the district is without merit because intent alone is insufficient to show domicile.

Respondent alleged that petitioners failed to appear at and participate in the BOE hearing on September 26, 2017.

In response, petitioners alleged that for over ten years they were, and still continue to be, domiciled within the respondent's school district. In this regard, petitioners submit that they own real estate within the district, pay taxes in the district, and receive their mail at a United States Postal Service Box in Alloway Township. Finally, petitioners alleged that, contrary to respondent's moving papers, they purchased a property on November 6, 2017, within the school district. Petitioners contended that it is their intention to be domiciled and reside at that property; however, they are unable to do so until extensive renovations are completed. They further contended that the required renovations have been delayed due to the unavailability of a Township Inspector. Petitioners submitted that their move to the Woodstown-Daretown Road residence was temporary and that their intention was always to remain domiciled for school purposes within the respondent's district.

Finally, petitioners alleged that they were precluded from participating in their hearing at the BOE, despite being present for the entire meeting. As a result, petitioners were prevented from providing testimony and documentary evidence to the BOE which established that, although they relocated out of the district temporarily, they remained domiciled in Alloway Township, and therefore, were entitled to continue to enroll their children in respondent's district at no cost.

LEGAL ANALYSIS

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision may be “rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Further, “[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid. This standard is substantially similar to that governing a civil motion under New Jersey Court Rule 4:46-2 for summary judgment. E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 350 (App. Div. 2010); Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 121 (App. Div. 1995).

In Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995), the New Jersey Supreme Court set forth the standard governing a motion for summary judgment:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.

A student is eligible to attend a school free of charge if the student is domiciled within the school district. A student is domiciled in the school district when he or she is living with a parent or legal guardian whose permanent home is located within the

district. A home is permanent when the parent or guardian intends to return to it after being absent from the home and has no present intent of moving from the home, notwithstanding the existence of homes or residences elsewhere. N.J.A.C. 6A:22-3.1(a)(1). Domicile may also be defined as a residence. N.J.S.A. 18A:1-1.; See V.R. ex rel A.R. v. Hamburg Bd. of Educ., 2 N.J.A.R. 283, 287 (1980), aff'd, State Bd., 1981 S.L.D. 1533, rev'd on other grounds sub nom. Rabinowitz v. N.J. State Bd. of Educ., 550 F. Supp. 481 (D.N.J. 1982) (New Jersey requires local domicile, as opposed to mere residence, in order for a student to receive a free education).

N.J.S.A. 18A:38-1(a) sets forth the right of a student to a free public education, which in pertinent parts states:

Public schools shall be free to the following persons over five and under 20 years of age:

a. Any person who is domiciled within the school district;

b.

(1) . . .

(2) If the superintendent or administrative principal of a school district finds that the parent . . . is not domiciled within the school district . . . the superintendent or administrative principal may apply to the board of education for the removal of the child. **The parent or guardian shall be entitled to a hearing before the board and if in the judgment of the board the parent or guardian is not domiciled within the district or . . . the board may order the transfer or removal of the child from school.** The parent or guardian may contest the board's decision before the commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the commissioner and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this subsection. The board of education shall, at the time of its decision, notify the parent or guardian in writing of his right to contest the decision within 21 days. No child shall be removed from school during the 21-day period in which the parent may contest the board's decision or during the pendency of the proceedings before the commissioner. If in the judgment of the commissioner the evidence does not support the claim of

the parent or guardian, the commissioner shall assess the parent or guardian tuition for the student prorated to the time of the student's ineligible attendance in the schools of the 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. Nothing shall preclude a board from collecting tuition from the parent or guardian for a student's period of ineligible attendance in the schools of the district where the issue is not appealed to the commissioner; [Emphasis added]

A person who meets age requirements and is domiciled within a school district may attend its public schools free of charge. N.J.S.A. 18A:38-1(a). A person may have many residences but only one domicile. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000), aff'd, 167 N.J. 55 (2001). A child's domicile is normally that of his or her parents. Ibid. The domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning, and from which he has no present intention of moving. In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), aff'd, 311 N.J. Super. 589 (App. Div.), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051, 119 S. Ct. 1357, 143 L. Ed. 2d 518 (1999).

The acts, statements and conduct of the individual, as viewed in the light of all the circumstances, determine a person's true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959). The parent has the burden of proof by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)(2).

Consideration in proving residency for purposes of establishing eligibility for school district placement is found at N.J.A.C. 6A:22-3.4(a):

(a) A district board of education shall accept a combination of any of the following or similar forms of documentation from persons attempting to demonstrate a student's eligibility for enrollment in the school district:

1. Property tax bills, deeds, contracts of sale, leases, mortgages, signed letters from landlords and other evidence of property ownership, tenancy or residency;

2. Voter registrations, licenses, permits, financial account information, utility bills, delivery receipts, and other evidence of personal attachment to a particular location;

...

4. Receipts, bills, cancelled checks, insurance claims or payments, and other evidence of expenditures demonstrating personal attachment to a particular location, or, where applicable, to support of the student;

...

6. Affidavits, certifications and sworn attestations pertaining to statutory criteria for school attendance, from the parent, guardian, person keeping an "affidavit student," adult student, person(s) with whom a family is living, or others as appropriate;

...

8. Any other business record or document issued by a governmental entity.

(b) A district board of education may accept forms of documentation not listed in (a) above, and shall not exclude from consideration any documentation or information presented by a person seeking to enroll a student.

(c) A district board of education shall consider the totality of information and documentation offered by an applicant, and shall not deny enrollment based on failure to provide a particular form of documentation, or a particular subset of documents, without regard to other evidence presented.

After a review of the procedural history, facts, and evidence, genuine issues of material fact exist relative to the location of petitioners' domicile and their residences. Additionally, petitioners are entitled to a hearing. N.J.S.A. 18A:38-1(b)(2). Genuine issues of material fact exist relative to whether petitioners attended the BOE hearing or, if they did attend, were afforded the opportunity to present evidence to the BOE to prove their domicile for purposes of establishing eligibility for school district placement in

Alloway Township. These issues of fact preclude summary decision in favor of the respondent at this time, and need to be fully explored and determined at a hearing.

I **CONCLUDE** that respondent's motion for summary decision must be **DENIED**.

CONCLUSION

I **CONCLUDE** that the respondent's motion for summary decision in its favor shall be denied because genuine issues of material fact exist.

ORDER

For the reasons set forth above, it is hereby **ORDERED** that the respondent Alloway Township's Board of Education's motion is **DENIED**.

This order may be reviewed by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.



July 11, 2018

DATE

DOROTHY INCARVITO-GARRABRANT, ALJ

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