

PLANNING, POLICY AND GOVERNMENTAL AFFAIRS
AUGUST 23, 2023

SUBJECT

Armed Forces / Public Safety Officer Dependent Scholarship Appeal

REFERENCE

February 16, 2023 Board approved request to appoint hearing officer

APPLICABLE STATUTE, RULE, OR POLICY

Idaho Code § 33-4302
Title 67, Chapter 52 Administrative Procedure Act

BACKGROUND/DISCUSSION

Idaho Code § 33-4302 as it existed prior to amendments effective April 4, 2013, provided a scholarship for the spouse or child of “any Idaho citizen who, while such person is or was a resident of the state of Idaho ... died of, or has become totally and permanently disabled by, injuries or wounds sustained during active duty or inactive duty training.” The Office of the State Board of Education administers the scholarship on behalf of the Board of Education and has historically verified Idaho residency by reference to the “home of record at the time of entry” as recorded in by the service member and reported in the service member’s form DD form 214.

Gage Burlile applied for the scholarship based on eligibility due to his father’s disability determination. Mr. Burlile’s application for the scholarship was denied based on the fact that his father was a resident of California at the time he entered service as reported on his DD form 214.

On November 23, 2022, Mr. Burlile requested an appeal and a hearing for the denial of his eligibility for the Armed Forces / Public Safety Officer Dependents Scholarship. At its February 16, 2023 meeting, the Board directed that a hearing officer from the Office of Administrative Hearings be appointed to hear the appeal.

A hearing was held on May 4, 2023. The hearing officer issued a recommended order finding that the OSBE arbitrarily relied on the home of record recorded by the service member and reported in the service member’s DD form 214 to determine Idaho residency. The hearing officer recommended that Mr. Burlile be awarded the scholarship.

The Idaho Legislature passed HB 219 (2023) amending Idaho Code § 33-4302 to clarify in statute that residency determinations shall be made by reference to the DD form 214, which will clarify administration of the program going forward.

IMPACT

The Board’s decision today will be the Board’s final order under the Administrative Procedures Act and will complete consideration of Mr. Burlile’s appeal.

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ATTACHMENTS

Attachment 1 – Order Granting Appeal

BOARD STAFF COMMENTS AND RECOMMENDATIONS

Board staff disagree with conclusions reached by the hearing officer, but agree that Mr. Burlile’s father did present evidence indicating his ties to Idaho. Given that the use of DD form 214 is now required by statute to determine residency, the hearing officer’s decision will not impact further residency determinations. Board staff recommend that Mr. Burlile be notified that he qualifies for the scholarship under the law as it existed at the time of his application.

BOARD ACTION

I move that the Board’s president issue the final order and direct the Office of the State Board of Education to notify Mr. Burlile that he will be awarded the armed forces scholarship. This action will constitute the Board’s final order in this matter under the Administrative Procedure Act.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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ATTACHMENT 1

**IDAHO STATE BOARD OF EDUCATION
STATE OF IDAHO**

GAGE BURLILE,)	
Petitioner,)	
)	ORDER GRANTING APPEAL
v.)	
)	
OFFICE OF THE STATE BOARD OF)	
EDUCATION,)	
Respondent.)	

Section 33-4302, Idaho Code, as it existed prior to amendments effective April 4, 2013, provided a scholarship for the spouse or child of “any Idaho citizen who, while such person is or was a resident of the state of Idaho ... died of, or has become totally and permanently disabled by, injuries or wounds sustained during active duty or inactive duty training.” The Office of the State Board of Education administers the scholarship on behalf of the Board of Education and has historically verified Idaho residency by reference to the “home of record at the time of entry” as recorded in by the service member and reported in the service member’s DD form 214.

Gage Burlile applied for the scholarship based on eligibility due to his father’s disability determination. Gage Burlile’s application for the scholarship was denied based on the fact that his father, Sean Burlile, was a resident of California at the time he entered service as reported on his DD form 214.

On November 23, 2022, Gage Burlile requested an appeal and a hearing for the denial of his eligibility for the Armed Forces and Public Safety Officer Scholarship. At its February 16, 2023 meeting, the Board directed that a hearing officer from the Office of Administrative Hearings be appointed to hear the appeal.

A hearing was held on May 4, 2023. The hearing officer issued a recommended order on July 17, 2023 finding that the OSBE arbitrarily relied on the

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home of record recorded by the service member and reported in the service member's form DD form 214 to determine Idaho residency. The hearing officer recommended that Gage Burlile be awarded the scholarship.

In the recommended order, the hearing officer found that Sean Burlile provided evidence establishing his long-term ties to Idaho. Based on this, the Board concludes that Gage Burlile is eligible for the scholarship provided for in Section 33-4302, Idaho Code. The Office of the State Board of Education is directed to notify Gage Burlile that he will be awarded the scholarship.

FINAL ORDER

Gage Burlile's appeal is granted. This is a final order issued pursuant to the Idaho Administrative Procedures Act (title 67, chapter 52, Idaho Code).

Dated August 23, 2023.

Idaho State Board of Education

Dr. Linda Clark
President, Idaho State Board of Education

NOTICE OF DUE PROCESS RIGHTS

This is a final order of the Idaho State Board of Education. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the issuance of this order. The Board will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4) and IDAPA 04.11.01.740.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- a. A hearing was held,
- b. The final Board action was taken,
- c. The party seeking review of the order resides, or operates its principal place of business in Idaho; or
- d. The real property or personal property that was the subject of the Board action is located.

An appeal must be filed within twenty-eight (28) days (a) of the issuance of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____ 2023, I caused to be served a true and correct copy of the foregoing FINAL ORDER by the following method to:

Gage Burlile
Sean Burlile
2965 S. Appia Ave.
Meridian, ID 83642

- U.S. Mail
- Hand Delivery
- Email at:
gb31thunder@icloud.com
sean.burlile@yahoo.com
- Overnight Mail

Florence Lince
Executive Assistant
Idaho State Board of Education