

New Jersey Commissioner of Education

Final Decision

G.G., on behalf of minor child, M.M.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that her minor child, M.M., was not entitled to a free public education in Elizabeth schools during the period between December 1, 2023 and February 12, 2024, contending that she and her child resided at an address on Bond Street in Elizabeth during this period. The Board contended that M.M. resided in Irvington with her grandmother. The Board sought tuition reimbursement for the period of M.M.'s alleged ineligible attendance in Elizabeth schools.

The ALJ found, *inter alia*, that: petitioner filed her *pro se* residency appeal on December 6, 2023; thereafter, petitioner failed to appear at a scheduled in-person hearing on February 12, 2024; petitioner offered no explanation for her failure to appear; the hearing proceeded on an *ex parte* basis to consider the Board's counterclaim for tuition. The ALJ concluded that petitioner has abandoned her appeal. Accordingly, the ALJ ordered the petition dismissed; further, the ALJ granted the Board's counterclaim for tuition and ordered the petitioner to reimburse the Board in the amount of \$4,483.35 for forty-five days of M.M.'s ineligible attendance during the period from December 1, 2023 to February 12, 2024.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter and dismissed the petition. Petitioner was ordered to reimburse the Board in the amount of \$4,483.35, and the petition was dismissed.

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.

141-24
OAL Dkt. No. EDU 00113-24
Agency Dkt. No. 336-12/23

New Jersey Commissioner of Education
Final Decision

G.G., on behalf of minor child, M.M.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union 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 petitioner abandoned her appeal and failed to sustain her burden of establishing that she was domiciled in Elizabeth (District) between December 1, 2023 and February 12, 2024. The Commissioner further concurs with the ALJ's conclusion that M.M. 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 petitioner for the time period during which the minor child was ineligible to attend school in the District. Therefore, the Board is entitled to tuition reimbursement in the amount of \$4,483.35¹ for the

¹ This amount is based on the per diem tuition of \$99.63 listed in the District's Notice of Final Ineligibility (Exhibit R-8) and 45 days of ineligible attendance as testified to by the District's investigator and shown on the District's 2023-2024 calendar (Exhibit R-12). The Commissioner was not provided with a transcript of the testimony.

period from December 1, 2023 and February 12, 2024, during which time M.M. 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 \$4,483.35. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²



ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 15, 2024

Date of Mailing: March 20, 2024

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 00113-24

AGENCY DKT. NO. 336-12/23

G. G. ON BEHALF OF MINOR CHILD, M.M.,

Petitioner,

v.

ELIZABETH BOARD OF EDUCATION,

UNION COUNTY,

Respondent.

G.G. petitioner, pro se, failed to appear.

Brian J. Kane, Esq, for respondent (LaCorte, Bundy, Varady & Kinsella)

Record Closed: February 12, 2024

Decided: February 14, 2024

BEFORE **JOANN LASALA CANDIDO**, ALAJ:

PROCEDURAL HISTORY

On December 6, 2023, petitioner, G.G., filed a residency appeal on behalf of her child, M.M., grade 12. On January 2, 2024, the City of Elizabeth Board of Education (BOE or respondent) filed an Answer with the State Department of Education (DOE) seeking reimbursement from petitioner for the costs of tuition incurred by the attendance of her minor child in the BOE's school district from December 1, 2023 through February

12, 2024, for a total of forty-five days at the per diem rate of \$99.63. The DOE transmitted this matter to the Office of Administrative Law (OAL) on January 2, 2024, for determination as a contested case pursuant to N.J.S.A. 52:14F-1 to -13. The matter was scheduled for an in-person hearing on February 12, 2024. G.G. failed to appear. Notwithstanding, testimony was taken pertaining to the cost of the education provided by the BOE.

FINDINGS OF FACT

Petitioner bears the burden to prove that her child was domiciled in the City of Elizabeth. Failure to sustain that burden leaves in place and affects the findings of BOE at its hearing regarding domicile of the child. Because of the petitioner's failure to appear at the plenary hearing, she fails to prosecute her appeal and there is no basis to consider overturning the finding of BOE.

Timothy Kirk, the district investigator for the district testified on behalf of the BOE in support of its counterclaim for tuition. Kirk was assigned to investigate this matter when the District received a returned mail notice. (R-5) He testified that based upon his investigation, M.M. attended high school in Elizabeth for 45 days from December 1, 2023 to February 12, 2024. (R-2) Kirk testified regarding the results of the investigation supporting the finding that M.M. is not domiciled at the Elizabeth address provided by petitioner, but rather resides with her grandmother in Irvington. Her laptop PINGED to the Irvington address and the school but was never located at the Elizabeth address provided by G.G. G.G. sent a letter to the district on December 6, 2023, referring to a lease that provides the Elizabeth address but never provided the lease. Kirk witnessed M.M. exiting and entering the home in Irvington.

BOE provided certification that the per student tuition rate for the time of the investigation from December 1, 2023 to February 12, 2024 is \$4,483.35, the daily cost for the student is at the rate of \$99.63. BOE has sustained its burden of proof with

respect to its counterclaim for tuition as to M.M. for the forty-five days of attendance at the public schools of BOE.

LEGAL ANALYSIS AND CONCLUSION

The issue in this appeal is whether M.M. was a domiciled student during the forty-five days she attended school in Elizabeth.

Public schools are required to provide a free education to individuals between the ages of five and twenty years in certain circumstances, including individuals who are domiciled within the school district. N.J.S.A. 18A:38-1(a). Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which whenever she is absent, she has the intention of returning. *State v. Benny*, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is the domicile of the 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). Thus, a child would routinely attend school in the district where his or her parents live.

N.J.S.A. 18A:38-1(b)(2) in pertinent part reads as follows:

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 section.

N.J.A.C. 1:1-14.4(a) requires the withholding of any action for one day "if, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the clerk or judge." Thereafter, the matter may be returned to the transmitting agency for appropriate disposition.

The petitioner has failed to appear and to appropriately prosecute the matter brought by her. She has also failed to advise the reason for the nonappearance.

Therefore, I **CONCLUDE** that the findings by BOE that the child in question is not domiciled in the City of Elizabeth is in full force and effect.

N.J.S.A. 18A:38-1(b)(1) reads in pertinent part as follows:

If in the judgment 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.

BOE's proofs as to ineligibility for attendance and as to the tuition rate are convincing and satisfy its burden of proof for the counterclaim. Therefore, I **CONCLUDE** that G.G. must pay BOE tuition calculated at the rates previously referenced for her child as to his attendance at BOE's public school during their ineligibility period.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that the petition of the petitioner, G.G, be and is hereby **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that G.G. reimburse respondent the total sum of \$4,483.35 for tuition costs associated with the attendance of her child M.M. in Elizabeth between December 1, 2023 and February 12, 2024.

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.

February 14, 2024



DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

February 14, 2024

Date Mailed to Parties:

February 14, 2024

ljb

APPENDIX

WITNESSES

For Petitioner:

Did not appear.

For Respondent:

Timothy Kirk

EXHIBITS

Petitioner

None

Respondent

- R-1 G.G.'s Powerschool Demographic Information
- R-2 Investigator Timothy Kirk's Summary of Residency file dated January 18, 2024
- R-3 Elizabeth Public School's Laptop Location Data (PING) for M.M.
- R-4 Background address check for G.G.
- R-5 Returned envelope.
- R-6 Photographs of Irvington address
- R-7 Blank Residency Verification Form
- R-8 Final Notice of Ineligibility dated December 1, 2023
- R-9 Proof of Delivery signed by G.G. at the Irvington address
- R-10 G.G.'s Residency Appeal
- R-11 Photographs of the Irvington address
- R-12 Academic Calendar for Elizabeth Public Schools