

277-24
OAL Dkt. No. EDU 02295-24
Agency Dkt. No. 25-2/24

New Jersey Commissioner of Education
Final Decision

S.W., on behalf of minor child, K.B.,

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 failed to sustain her burden of establishing that she and her minor child, K.B., were domiciled in Elizabeth (the District) between January 26, 2024, and May 17, 2024. The Commissioner further concurs with the ALJ's conclusion that K.B. was, therefore, not entitled to a free public education in the District during that time.

Pursuant to *N.J.S.A. 18A:38-1(b)*, the Commissioner shall assess tuition against petitioner for the time period during which K.B. was ineligible to attend school in the District. Therefore,

respondent, Board of Education of the City of Elizabeth (Board) is entitled to tuition reimbursement in the amount of \$6,974 for the period from January 26, 2024, to May 17, 2024.¹

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 \$6,974 for tuition costs incurred from January 26, 2024, to May 17, 2024, when K.B. was ineligible to attend school in the District. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 18, 2024
Date of Mailing: July 19, 2024

¹ This amount is based on the per diem tuition rate of \$99.63 per day listed in the District's Final Notice of Ineligibility (Exhibit R-4) and the District's 2023-2024 School Year Calendar (Exhibit R-12), which reflects 70 school days between January 26, 2024, and May 17, 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 02295-24

AGENCY DKT. NO. 25-2/24

S.W. ON BEHALF OF MINOR CHILD K.B.,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY

OF ELIZABETH,

Respondent.

S.W., petitioner, pro se

Brian Kane, Esq., for respondent, (La Corte, Bundy, Varady & Kinsella,
attorneys)

Record Closed: May 16, 2024

Decided: June 20, 2024

BEFORE **ANDREA PERRY VILLANI**, ALJ:

STATEMENT OF THE CASE

K.B. is a minor child and student who attends high school in Elizabeth, New Jersey, though her mother, S.W., rents an apartment for the family in Linden, New Jersey. Is K.B. entitled to a free public school education in Elizabeth? No. Under N.J.S.A. 18A:38-

1(b)(2), a free public education is not available to a child whose parent is domiciled outside of the district.

PROCEDURAL HISTORY

On January 26, 2024, the Board issued a Notice of Final Ineligibility regarding minor child, K.B.'s, attendance at Elizabeth Public Schools.

On February 1, 2024, S.W. filed her pro se Residency Appeal on K.B.'s behalf.

On February 14, 2024, the Board filed an Answer and Counterclaim.

On February 20, 2024, the New Jersey Department of Education, Office of Controversies and Disputes, 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.

On March 11, 2024, I conducted the first Prehearing Conference. During that conference, the Board stated its position that S.W. and K.B. live in Linden, New Jersey, not Elizabeth. S.W. stated that she would like time to consider hiring an attorney. I granted her request and allowed her thirty days.

On April 15, 2024, I conducted the second Prehearing Conference and issued a Prehearing Order. The Prehearing Order set the hearing date for May 16, 2024, and among other things, it directed the parties to exchange their witness lists ten days before the hearing.

On May 16, 2024, I conducted the hearing and closed the record.

DISCUSSION AND FINDINGS OF FACT

S.W., mother of K.B., is married with five children. K.B. is the oldest. She is fifteen years old and in tenth grade at Dwyer High School in Elizabeth, New Jersey. S.W.'s other four children are all younger than K.B. and attend public school in Linden, New Jersey.

Back in 2019, S.W. moved her family from New Jersey to Philipsburg, PA. The family remained there for about two years until they moved to Hampton, VA during the Covid-19 pandemic. They remained in Virginia until 2023, when S.W. and her husband experienced marital problems. In or about April 2023, S.W. sent K.B. back to New Jersey to live with S.W.'s sister, K.W., in Elizabeth. K.B. did not attend school for about one month. K.B. was eventually enrolled in public school in Elizabeth at Dwyer High School on May 8, 2023. (R-1.)

S.W. moved back to New Jersey about a month after K.B. She estimates that was in May 2023. S.W. states that she moved in with K.B. at K.W.'s Elizabeth residence. At some point that summer, S.W.'s husband and the other four children moved back to New Jersey from Virginia. During that time, S.W. was the sole breadwinner for the family, working as a Respiratory Support Technician.

On July 15, 2023, S.W. entered into a one-year lease for an apartment in Linden, NJ. The term of the lease agreement is from August 1, 2023 to July 31, 2024. Paragraph six of the lease states that the household members are S.W. and her children. S.W.'s signature appears on the lease. (R-7.)

S.W. states that she leased the apartment for her husband and her four youngest children (K.B.'s siblings). She claims that when she and her husband had marital problems in Virginia, they decided to separate, and her four youngest children chose to live with their father. S.W. further claims that her husband was not working at the time, so he was not able to lease an apartment on his own.

The name that appears on the Linden lease is clearly S.W.'s, except that she used her married name with the initials "S.R." (R-7.) She opened a Xfinity Account for the Linden home under her married name. (R-8.) She also had a bank account with TD Bank

under her married name at the Linden address, as she received mail from TD Bank at the Linden address. (R-9.)

However, when S.W. registered K.B. for school in Elizabeth, she used her maiden name, “S.W.” (P-1.) She also used her maiden name on the 6-C Affidavit, which stated that she and K.B. “are in full-time residence [at K.W.’s home in Elizabeth]...for the period of April 2023 through Dec. 2023” (P-1); but, as noted above, S.W. did not come back to New Jersey until May 2023 (per her testimony), and she leased an apartment in August 2023 (R-7).

Then, in December 2023, S.W. signed a Residency Affidavit stating that she “is the renter of the property located...in the City of Linden.” (R-10.) S.W. states that she signed this Affidavit so her sister, K.W., could enroll her children in Linden schools, after K.W.’s son had a bad experience in Elizabeth schools and didn’t feel safe there.

Despite the Linden Residency Affidavit, lease, cable bill, and TD bank account, S.W. maintains that she does not live in Linden. She states that she and her husband are still separated, and that she has been staying at K.W.’s home in Elizabeth since she returned to New Jersey in May of last year. S.W. further states that only her husband and four younger children live at the Linden home. S.W. and her husband have no written separation agreement and S.W.’s husband did not testify.¹

S.W. did not provide any photos of her living or sleeping space at K.W.’s home in Elizabeth. She did provide several photos of K.B.’s alleged sleeping accommodation in Elizabeth. (P-3.) The photos indicate that K.B. may have a bed at K.W.’s home, as there are some female articles of clothing that appear in the photos. (K.W.’s children are all boys.) There is also women’s deodorant on the dresser; but, there is men’s deodorant next to it on the dresser as well.

¹ S.W.’s husband was listed as a possible witness in the Prehearing Order. However, the Prehearing Order also required the parties to exchange witness lists at least ten days prior to the hearing. It was during this exchange of information that S.W. informed opposing counsel that her husband would not be testifying on her behalf and, accordingly, he did not appear at the hearing.

While it is possible that K.B. sleeps at K.W.'s home in Elizabeth, and that she is there before and after school since she attends school close by, it is unclear how often she sleeps there. To answer this question, the Board provided location data for K.B.'s school-issued laptop computer. (R-6.) The data indicates that, from September 27, 2023 to March 8, 2024, K.B.'s laptop was turned on at K.W.'s Elizabeth home on only five days: October 27, 2023, January 8, 2024, January 25, 2024, January 29, 2024, and February 23, 2024. (R-6.)

By contrast, during this same time period, K.B.'s laptop was turned on at the Linden home on sixty-four different days. (R-6.) Those days were:

Saturday September 30, 2023	Saturday November 18, 2023
Sunday October 8, 2023	Sunday November 19, 2023
Monday October 9, 2023	Monday November 20, 2023
Wednesday October 11, 2023	Tuesday November 21, 2023
Sunday October 15, 2023	Sunday December 3, 2023
Tuesday October 17, 2023	Tuesday December 5, 2023
Friday October 20, 2023	Tuesday December 12, 2023
Sunday October 22, 2023	Wednesday December 13, 2023
Monday October 23, 2023	Thursday December 14, 2023
Tuesday October 24, 2023	Friday December 15, 2023
Tuesday October 31, 2023	Saturday December 16, 2023
Wednesday November 1, 2023	Wednesday January 10, 2024
Thursday November 2, 2023	Saturday January 20, 2024
Sunday November 5, 2023	Sunday January 21, 2024
Monday November 6, 2023	Monday January 22, 2024
Thursday November 16, 2023	Tuesday January 23, 2024
Friday November 17, 2023	Tuesday January 30, 2024

Wednesday January 31, 2024
Thursday February 1, 2024
Friday February 2, 2024
Saturday February 3, 2024
Sunday February 4, 2024
Monday February 5, 2024
Tuesday February 6, 2024
Thursday February 8, 2024
Friday February 9, 2024
Saturday February 10, 2024
Sunday February 11, 2024
Tuesday February 13, 2024
Saturday February 17, 2024
Monday February 18, 2024
Monday February 19, 2024

Tuesday February 20, 2024
Wednesday February 21, 2024
Thursday February 22, 2024
Friday February 23, 2024
Saturday February 24, 2024
Sunday February 25, 2024
Wednesday February 28, 2024
Thursday February 29, 2024
Friday March 1, 2024
Saturday March 2, 2024
Sunday March 3, 2024
Monday March 4, 2024
Wednesday March 6, 2024
Thursday March 7, 2024
Friday March 8, 2024

As shown, the last time K.B.'s laptop was detected in Linden was March 8, 2024. Three days later, March 11, 2024, was the day of the first Prehearing Conference in this matter. It was at this time the Board stated its position that K.B. lives in Linden, not Elizabeth. Thereafter, K.B.'s laptop was never turned on at the Linden home again; and, for the next month, from March 12, 2024 to April 13, 2024, K.B.'s laptop was turned on at the Elizabeth home ten times: March 12, 2024, March 13, 2024, March 15, 2024, March 22, 2024, March 23, 2024, March 25, 2024, March 27, 2024, March 29, 2024, April 9, 2024, and April 13, 2024.² (R-6.)

² For this same time period (March to April 2024), S.W. presented security video footage of K.B. entering and exiting K.W.'s home. (P-4.) Counsel for the Board objected to moving the videos into evidence based on the lack of time and date stamp. However, I **FIND** that K.W. sufficiently authenticated the videos in her testimony and reliably identified the videos as taken on March 23, 2024, March 26, 2024, March 27, 2024, March 28, 2024, April 9, 2024, and April 12, 2024. Nevertheless, I **FIND** that the videos are of little probative value as they only cover a three-week period after this case commenced.

S.W. explains that K.B. goes to the Linden home to visit her father and siblings, but she still maintains that K.B. does not live there. However, the sheer volume of location data from the laptop at the Linden home – compared to the lack of data at the Elizabeth home – during the time leading up to the start of this case, says otherwise.

Given this discussion of facts, I **FIND** that S.W. has not met her burden to establish by a preponderance of the evidence that she currently lives in the City of Elizabeth. See, N.J.S.A. 18A:38-1(b)(2). Indeed, I **FIND** that the preponderance of the evidence including, but not limited to, the laptop data (R-6), the Linden lease (R-7), Linden mail in S.W.'s name (R-8, R-9), and Linden Residency Affidavit (R-10), demonstrates that both S.W. and K.B. live in Linden, New Jersey.

I also **FIND** that the Board has requested tuition reimbursement for seventy school days: from January 26, 2024, the date of the Notice of Final Ineligibility, to May 17, 2024, the date the record closed. (R-12.) I further **FIND** that, at the rate of \$99.63 per day, the total amount of tuition requested is \$6,974.

CONCLUSIONS OF LAW

Any child between the ages of five and twenty years old is entitled to a free public education in the district where he or she resides. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). However, if a board of education finds that the parent or guardian of a child who is attending school in the district is not domiciled within the district, the board may pursue removal of the child. N.J.S.A. 18A:38-1(b)(2). Where a local board of education seeks removal of a child from the school, the parent may appeal to the Commissioner of Education. Id. In the proceeding before the Commissioner, the parent has the burden of proof by a preponderance of the evidence that the child meets the eligibility requirements for a free education. Id.

In this case, I **CONCLUDE** that the parent, S.W., has not proven by a preponderance of the evidence that the child, K.B., meets the eligibility requirement for a free education in Elizabeth, New Jersey. More specifically, S.W. did not prove by a

preponderance of the evidence that she is domiciled in Elizabeth.³ Rather, the preponderance of the evidence demonstrates that S.W. is domiciled in Linden, New Jersey. Therefore, K.B. is entitled to a free public education in Linden, but not Elizabeth.

If the evidence does not support the parent's claim, the Commissioner shall assess the parent tuition for the student prorated to the time of the student's ineligible attendance in the schools of the district. Id. However, "[n]othing...shall preclude an equitable determination, by the district board of education or the Commissioner, that, when the particular circumstances of a matter so warrant, tuition shall not be assessed for all or part of any period of a student's ineligible attendance in the school district." N.J.A.C. 6A:22-6.3(b).

In this case, I **CONCLUDE** that the Board is entitled to tuition due to K.B.'s ineligible attendance at Dwyer High School in Elizabeth. I further **CONCLUDE** that the Board made an appropriate equitable determination to assess tuition only from the Notice of Final Ineligibility to the date the record closed. Therefore, I **CONCLUDE** that the Board is entitled to reimbursement of tuition for seventy school days in the amount of \$6,974, as requested.

ORDER

Based on the foregoing, I **ORDER** that S.W.'s residency appeal is **DENIED**, and the Board's request for \$6,974 in tuition reimbursement is **GRANTED**.

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

³ As noted above, S.W. also did not prove by a preponderance of the evidence that K.B. is domiciled in Elizabeth. However, even if S.W. did prove that K.B. lives in Elizabeth with her aunt, K.W., she would not be entitled to a free education there. Under N.J.A.C. 6A:22-3.2(a), a student is eligible to attend the school where he or she is kept in the home of a relative, but only if that person is supporting the student without remuneration as if the student were his or her own child. S.W. did not present any evidence on this point. Finally, K.B. also does not meet the definition of a homeless child under N.J.A.C. 6A:17-2.2(a)(3): "...a child or youth is homeless when the child or youth resides in any of the following...[t]he residence of relatives or friends where the homeless child or youth resides out of necessity because the child's or youth's family lacks a regular or permanent residence of its own." As of August 1, 2023, K.B.'s family did have a regular, permanent residence of its own in Linden, New Jersey.

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 20, 2024

DATE

ANDREA PERRY VILLANI, ALJ

Date Received at Agency:

June 20, 2024

Date Mailed to Parties:

June 20, 2024

sej

APPENDIX

WITNESSES:

For Petitioner:

S.W., pro se

K.W.

For Respondent:

William Buteau, Investigator

EXHIBITS:

For Petitioner:

P-1 Residency Appeal and Verification

P-2 Bank Statements and Invoices

P-3 Photographs

P-4 Videos

For Respondent:

R-1 Powerschool Records

R-2 Investigation Report

R-3 Notice of Initial Determination

R-4 Notice of Final Ineligibility

R-5 Investigator's Photographs

R-6 Laptop Location Data

R-7 S.W.'s Lease Agreement

R-8 S.W.'s Xfinity Cable Bill

R-9 S.W.'s Mail (TD Bank)

R-10 Affidavit of Residency

R-11 Memorandum of Enrollment

R-12 Elizabeth Academic Calendar