

New Jersey Commissioner of Education

Final Decision

E.C. and S.C., on behalf of minor children, C.C. and K.C.,

Petitioners,

v.

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

Respondent.

Synopsis

Pro se petitioner challenged a decision by the Elizabeth School District finding that his two minor children improperly attended school within the District for several months while they resided with him outside the District. Petitioner contended that he and his wife, S.C., owned two homes, one in Elizabeth and the other in Newark. In early 2023, petitioner and his wife separated, and S.C. remained in Elizabeth while E.C. moved to the Newark house. Because S.C. traveled frequently to her home country of Ecuador, E.C. acted as the primary custodial parent during her absences. Eventually E.C. moved the children to the Newark house temporarily, always intending to move them back to Elizabeth with their mother. The District sought to impose a penalty pursuant to statute at the rate of \$99.63 per day per child while they lived outside the District.

The ALJ found, *inter alia*, that: *N.J.S.A.* 6A:22-1 et. seq. governs student residency requirements within certain school districts; in order to be eligible to attend public school within a municipality, students must be domiciled within the town where the school is located; there are several exceptions to the statutory requirement requiring residency within the district, including Family Crisis and being the child of divorced or separated parents; based on the petitioner's undisputed testimony, and taking into account the limited nature of the residency investigation conducted by the school district, petitioner's children fell into the categories of both Family Crisis and separation, and as such were entitled to continue to attend the Elizabeth Public Schools during the entirety of the 2022-2023 school year pursuant to *N.J.A.C.* 6A:22-3.1(a)(1)(i). Accordingly, the ALJ granted petitioners' appeal and reversed the district's determination regarding tuition owed for the period when the children were temporarily residing outside of Elizabeth.

Upon review, the Commissioner concurred with the Administrative Law Judge that petitioners' minor children were entitled to attend school in the Elizabeth school district during the entirety of the 2022-2023 school year pursuant to *N.J.A.C.* 6A:22-3.1(a)(1)(i). Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, the petitioners' appeal was granted, and the Board's counterclaim for tuition was denied.

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.

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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 that petitioners' minor children were entitled to attend school in the Elizabeth school district during the entirety of the 2022-2023 school year pursuant to *N.J.A.C. 6A:22-3.1(a)(1)(i)*.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby granted. Respondent Board's counterclaim for tuition reimbursement is denied.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2024
Date of Mailing: September 9, 2024

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

DISMISSAL

OAL DKT. NO. EDU 03974-23

AGENCY DKT. NO. 100-4/23

**E.C. AND S.C. ON BEHALF OF MINOR
CHILDREN C.C. AND K.C.,**

Petitioners,

v.

**CITY OF ELIZABETH BOARD OF EDUCATION,
UNION COUNTY,**

Respondent.

E.C., petitioner, pro se

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

David M., Interpreter

Record closed: June 13, 2024

Date of Decision: July 25, 2024

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE

Petitioning parent challenges a decision by the Elizabeth School District finding that his two minor children improperly attended school within the District for several

months while they resided with him outside the District. The District further seeks to impose a significant penalty pursuant to statute at the rate of \$99.63 per day per child while they were living outside the District.

PROCEDURAL HISTORY

On or about March 13, 2023, the Elizabeth School district sent final Notices of Ineligibility for petitioner's two minor children C.C. and K.C. to remain students within the District due to a change of Domicile.

Petitioner sought an internal appeal within District and was denied.

Pursuant to statute, the District allowed both children to remain as students pending the outcome of a formal appeal before the Office of Administrative Law.

The 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 office, 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, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. Jurisdiction is conferred under N.J.S.A. 18A:6-9. The case was filed at the Office of Administrative Law (OAL) on May 8, 2023.

FACTUAL DISCUSSION

According to petitioner, he and his wife, from whom he is separated, own two homes, one in Elizabeth and another in Newark.

Like many couples who separate, no formal written agreement was created, but the couple separated in early January 2023. At that time, petitioner moved into the Newark residence.

Petitioner testified that his wife often traveled to her home country of Ecuador, leaving him to care for the couple's children. Though at first, he visited them often, the children often expressed disappointment when he had to leave and so they asked if they could reside with him. At all times relevant herein, petitioner's wife, (the mother of the children) remained a resident of Elizabeth.

Out of respect for his wife's desire to live separately, petitioner stated that he allowed the children to move in with him in Newark for the balance of the 2023 school year, and he arranged to transport them to Elizabeth. Since he was out of work due to an injury he suffered at a jobsite, he was able to provide transportation for them to and from Newark, which he does not deny became the children's temporary home. He did indicate however, that it was never the intention to have the children permanently reside in Newark, and in fact at the time of the final date of hearing, petitioner had moved back into the Elizabeth where he and his wife reside in separate bedrooms. (The Newark property has since been rented out.)

Testifying for Elizabeth was William Buteau ("Mr. Buteau"), who serves as a school investigator.

Prior to assuming his duties with the District, Mr. Buteau worked as a police officer with the Elizabeth Police Department.

According to Mr. Buteau, on or about March 1, 2023, a secretary from the District contacted him and requested an investigation be opened against petitioner and his two children. Apparently, the referral came from the District's IT Department, which noted a series of "pings" from the children's laptop computers that were coming from outside the geographic boundaries of the District. (To further support its case against petitioner, the District presented eight pages of documents from certain dates in March, April and May 2023 showing the "pings" from outside Elizabeth). It should be noted that though Mr. Buteau testified to the ping record, the documents were not certified nor did an IT expert testify concerning how computer use is tracked.)

Mr. Buteau went on to say that he also reached the conclusion that the children were not eligible to attend school in Elizabeth because on one occasion he parked his vehicle outside petitioner's other residence in Newark, where he observed petitioner put the children in his car and drive away on a school day. (Mr. Buteau admits that part of the way from Newark to Elizabeth, he lost track of the vehicle, and he did not attempt to trace or follow petitioner or his children again.)

When asked if he did any further investigation such as parking outside the school to see if petitioner picked the children up to take them to Newark, he indicated that due to a heavy caseload, he did not take time to see where the children went after school.

Finally, Mr. Buteau was asked whether he had any interactions directly with petitioner, and/or attempted to interview him. Other than one short interaction when petitioner came to school to explain his domestic situation, he did not pursue anything further with petitioner.

FINDINGS OF FACT

1. At all times relevant herein, petitioner and his wife were residents of the City of Elizabeth.
2. At the start of the 2022-23 school year, both of petitioner's children, C.C. and K.C. were enrolled as students in the district.
3. Some time at the beginning of 2023, petitioner and his wife separated, with petitioner moving to a home they owned in the City of Newark.
4. Petitioner commenced visiting his children as often as he could, and when his wife made trips to Ecuador, petitioner acted as the primary custodial parent.
5. Some time in early March 2023, both children expressed to petitioner that they missed him and wanted to see him more.
6. Believing at the time that it was better for he and his wife to remain apart, petitioner arranged for both children to temporarily move into the Newark home with him.
7. Since he was out of work due to a job injury, petitioner was able to transport the children to school each day.

8. Petitioner does not deny that the children were residing with him in Newark temporarily.
9. Though this temporary arrangement remained in effect for the balance of the 2023 school year, since he did not want to harm his children's' education, within the first months of the 2023-24 school year, petitioner moved back to Elizabeth residing in the same home as his wife, though they created separate areas and slept in separate bedrooms.
10. At all times relevant herein, petitioner wife, (to whom he was still married) and the mother of the children still resided in Elizabeth.

LEGAL STANDARD AND CONCLUSIONS

N.J.S.A. 6A:22-1 et. seq. governs student residency requirements within a certain school district. In order to be eligible to attend public school within a municipality, students must be domiciled within the town where the schools are located, unless the District itself has an agreement with a neighboring district for its residents to attend school outside the district.

N.J.S.A. 6A:22-6.2 allows for a student who has moved outside the district to remain a student within the contested district provided an appeal has been filed. However, the district can still pursue tuition reimbursement from the parents of the student for the period of time in question once the appeal is completed.

There are several exceptions to the statutory requirement requiring residency within the district, one of which is "Family Crisis." Another exception is being the child of divorced or separated parents.

Based on the petitioner's undisputed testimony, compared against the limited nature of the investigation conducted by the Elizabeth investigator, **I CONCLUDE** that petitioner's children fell into both categories of "Family Crisis" and Separation, and as such were entitled to continue to attend the Elizabeth Schools from March 2023 through October 2023 when the first day of appeal started.

I FURTHER CONCLUDE that since for the sake of the children, after a few months, petitioner moved back to Elizabeth on a permanent basis, no tuition should be assessed against petitioner while the appeal was pending in good faith.

ORDER

It is hereby **ORDERED** that the petitioners' circumstances fall within the "Family Crisis" and Separation exceptions to the residency statute. Accordingly, the appeal is **GRANTED** and the determination seeking tuition payments for attending school while temporarily domiciled out-of-District is **REVERSED**.

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.

July 25, 2024

DATE



ANDREW M. BARON, ALJ

Date Received at Agency:

July 25, 2024

Date E-Mailed to Parties:

July 25, 2024

lr

APPENDIX

Witnesses

For Petitioners:

E.C.

For Respondent:

William Buteau

Exhibits

Petitioner:

P-1 Miscellaneous submissions concerning children's certificates and progress in schools and medical information as well as letter from petitioner explaining domestic separation from mother of children

Respondent:

- P-1 Investigator's Memorandum
- P-2 Demographic information for C.C. and K.C.
- P-3 EBOE laptop tracking for K.C.
- P-4 EBOE laptop tracking for C.C.
- P-5 Notice of Initial Determination
- P-6 Final notice of ineligibility C.C.
- P-7 Final notice of ineligibility K.C.
- P-8 Petitioner's submissions
- P-9 EBOE 22-23 school calendar
- P-10 EBOE 23-24 school calendar