

O.G., on behalf of minor children, A.G. and A.G.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF ELIZABETH, UNION COUNTY,	:	DECISION
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner filed a *pro se* residency appeal on behalf of her children, A.G. and A.G., seeking a determination that the children are entitled to a free public education in the Elizabeth schools. The respondent Board contended that a residency investigation revealed that that petitioner and her children are not domiciled in Elizabeth, but rather live in Carteret with O.G.’s boyfriend. The Board filed a counterclaim for tuition for the period of A.G. and A.G.’s ineligible attendance in Elizabeth schools.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a), any persons between the ages of five and twenty years old are entitled to a free public education in the school district in which they are domiciled; under *N.J.S.A.* 18A:38-1(b)(2), parents may contest a local school board’s residency decision, but have the burden of proof by a preponderance of the evidence to prove domicile within the school district; in this matter, a hearing was held on November 1, 2018, at which the Board presented credible testimony from the school district’s residency investigator that indicated that petitioner does not reside in Elizabeth, but instead lives in Carteret; the petitioner’s testimony and proofs of residency offered at hearing were not convincing. The ALJ concluded that the Board met its burden to show that A.G. and A.G. were not domiciled in Elizabeth during the period of the children’s attendance in Elizabeth schools, and were therefore not entitled attend school there free of charge. Accordingly, the ALJ ordered the petitioner to reimburse the Board for tuition in the amount of \$3,784.53 for the period of her children’s ineligible attendance in Elizabeth schools.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision as the final decision in this matter with modification to the amount of tuition owed. The Commissioner found that the tuition amount stated in the Initial Decision was for one child rather than two. Therefore, petitioner was ordered to reimburse the Board in the total amount of \$7,569.06, which represents the cost of tuition for both children during their period of ineligible attendance.

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.

December 14, 2018

OAL DKT. NO. EDU 11833-18
AGENCY DKT. NO. 187-8/18

O.G., on behalf of minor children, A.G. and A.G.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
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BOARD OF EDUCATION OF THE TOWNSHIP OF ELIZABETH, UNION COUNTY,	:	DECISION
	:	
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Elizabeth Board of Education (Board).¹

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons stated in the Initial Decision – that A.G. and A.G. are not domiciled in the district, and that the Board’s decision denying A.G. and A.G. the ability to attend school in the district was not arbitrary, capricious or unreasonable. The Commissioner, however, is not in accord with the amount of the tuition that was assessed upon petitioner by the ALJ.

The Board is seeking tuition for A.G. and A.G.’s ineligible attendance in the district for 10 days during the 2017-2018 school year and 37 days during the 2018-2019 school year. The tuition rate for the 2017-2018 school year is \$83.23 per day, and the tuition rate for the 2018-2019 school year is \$79.79 per day. Therefore, the Board is seeking tuition for each of the students in the amount of \$3,784.53, for a total of \$7,569.06 to be reimbursed for the two

¹ The record did not include a transcript of the hearing held at the Office of Administrative Law on November 1, 2018.

students. In the Initial Decision, however, the ALJ awarded tuition in the amount of \$3,784.53, which is the cost of tuition for only one of the students.

Accordingly, the Initial Decision is adopted as the final decision as modified above. The petitioner shall pay the Board \$7,569.06 in tuition costs for A.G. and A.G.'s ineligible attendance in the District for 10 days during the 2017-2018 school year and for 37 days during the 2018-2019 school year.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 14, 2018

Date of Mailing: December 14, 2018

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 11833-18

AGENCY DKT. NO. 187-8/18

O.G. ON BEHALF OF MINOR CHILDREN

A.G. & A.G.,

Petitioner,

v.

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

Respondent.

O.G., petitioner, appearing pro se

Christina M. DiPalo, Esq. for respondent (LaCorte, Bundy, Varady & Kinsella,
attorneys)

Record Closed: November 2, 2018

Decided: November 7, 2018

BEFORE: **JOANN LASALA CANDIDO**, ALJ

STATEMENT OF THE CASE

Petitioner, O.G., challenges the residency determination made by the Elizabeth Board of Education ("Board") about her minor children A.G. (son). and A.G. (daughter). On August 9, 2018, respondent submitted an Answer, which was filed with the

Commissioner of Education on August 10, 2018. Respondent's demand included a request that the Commissioner dismiss the petition of appeal, that the children be removed from the district, and that the petitioner be assessed a tuition charge for each day of the two children's' ineligible attendance in the Board's schools for the last ten days of the 2017-2018 school year and thirty-seven days for the 2018-2019 school year.

The matter was transmitted to the Office of Administrative Law (OAL) on August 16, 2018, for resolution as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A.52:14F-1 to -13. A hearing was held on November 1, 2018, and the record closed on November 2, 2018, upon receipt of tuition calculations.

The issues in this matter are whether A.G. (son) and A.G. (daughter) are eligible to attend respondent's public schools free of charge in accordance with N.J.S.A. 18A:38-1 and, if not, whether respondent's requests for tuition reimbursement and for disenrollment of the children should be granted.

Based upon the papers submitted as of the hearing date and the supplemental submission by respondent as well as the testimony of O.G. and Elizabeth Board of Education Investigator Vito Tropeano, I **FIND** the following **FACTS**.

On or about November 20, 2017, Elizabeth Public School received an undeliverable letter sent to O.G. at the Summer Street, Elizabeth address provided by O.G. to the District as her residence. Residency Investigator Tropeano confirmed that the Summer Street address was vacant and under construction. Elizabeth Public Schools requested a residency investigation of petitioner and Investigator Tropeano was assigned the investigation on or about December 7, 2017.

An eligibility hearing was conducted on July 9, 2018. On July 10, 2018, the District sent a notice of final ineligibly to petitioner at a Carteret address. On July 18, 2018, Tropeano went to the Carteret address where petitioner's boyfriend resides and AG (daughter) answered the door and told the investigator that her mother was at work and her brother was at summer school. Tropeano returned to the Carteret address on September 25, 2018 and AG son answered the door and told him he stayed home from

school sick and his sister went to school and his mother went to work. Tropeano went to the Elizabeth address provided by petitioner on three occasions and observed names other than hers on the mailboxes at the two-family residence and did not observe petitioner at this address. He also contacted the Elizabeth Tax Assessor who confirmed a name other than petitioner owned the home in Elizabeth. Tropeano also inputted petitioner's name in a program Accurint that reveals her utility bills reflect the Carteret address.

Petitioner presented a shut off notice from Elizabeth Town Gas dated May 2, 2018, for a February 2018 unpaid bill. (P-1) The same for PSE&G. (P-2) Petitioner contends that she resides with her sister at the Elizabeth address but sometimes she and her children stay at her boyfriend's house in Carteret. Petitioner's driver's license is registered in New York. Petitioner provided to the District a letter from her sister claiming she lives with her at the Elizabeth address. Her sister did not testify at the hearing. She also stated that she has current utility statements but did not have them with her.

The respondent is seeking tuition for the two children for 2017-2018 school year at a daily rate of \$83.23 for ten days for a total cost of \$832.30; and tuition for the two children for the 2018-2019 school year at a daily rate of \$79.79 for thirty-seven days for a total cost of \$2,952.23.

Under N.J.S.A. 18A:38-1(a), "[a]ny person who is domiciled within the school district" is entitled to a free education from that district. However, "[i]f the superintendent or administrative principal of a school district finds that the parent or guardian of a child who is attending the schools of the district is not domiciled within the district . . . , the superintendent or administrative principal may apply to the board of education for the removal of the child." N.J.S.A. 18A:38-1(b)(2). The parents may contest a local school board's decision regarding the student's right to attend school in the district to the Commissioner of Education and "shall have the burden of proof by a preponderance of the evidence" to prove domicile in the school district. N.J.S.A. 18A:38-1(b)(2). The State

Board of Education has promulgated various rules implementing N.J.S.A. 18A:38-1 and governing student domicile and eligibility to attend school. N.J.A.C. 6A:22-1.1 to -6.3.

Generally, appeals of a local school board's "determinations with respect to entitlement to attend school pursuant to N.J.S.A. 18A:38-1 and N.J.A.C. 6A:22[-1.1 to 6.3]" proceed under the general provisions governing controversies and disputes before the Commissioner of Education, N.J.A.C. 6A:3-1.1 to -1.17, but certain exceptions exist. N.J.A.C. 6A:3-8.1(a). For example, pro se petitioners may file a petition in letter form if they use a specific form provided by the Department of Education. N.J.A.C. 6A:3-8.1(a)(1). When utilizing the Pro Se Residency Appeal form provided by the Department of Education to file their petition, the parents or guardians must "[i]nclude a signed attestation" that "[t]hey understand that they may be assessed tuition for the period of the child(ren)'s ineligible attendance . . . if the Commissioner determines that the appeal has been abandoned or withdrawn and/or that the child(ren) are ineligible for a free education in the district." N.J.A.C. 6A:3-8.1(a)(1)(iv)(2).

According to N.J.A.C. 6A:22-6.3(a), "[t]uition assessed pursuant to the provisions of this section shall be calculated on a per student basis for the period of a student's ineligible enrollment, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23-3.1. The individual student's record of daily attendance shall not impact on such calculation." However, "[n]othing in this chapter shall preclude an equitable determination, by the district board of education or the Commissioner, that, when the 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).

Based on the foregoing, I **CONCLUDE** that the respondent has met its burden under N.J.S.A. 18A:38 b (2) that A.G. and A.G. were not domiciled in Elizabeth for the dates reflected and therefore are not entitled to a free education in the Elizabeth school district.

I further **CONCLUDE** that A.G. and A.G. were educated in the District at a daily rate of \$83.23 for ten days for a total cost of \$832.30; and tuition for the two children for the 2018-2019 school year is at a daily rate of \$79.79 for thirty-seven days for a total cost of \$2952.23. The total cost for two children is \$3,784.53 for which the district is entitled to reimbursement.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's determination that A.G. and A.G. are not residents and domiciliary in Elizabeth, New Jersey, and were not domiciled within its school district during the period being sought, is hereby **AFFIRMED**. It is further **ORDERED** that respondent is entitled to reimbursement from petitioner for the cost of audited tuition in the amount of \$3,784.53.

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.

November 7, 2018



DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

November 7, 2018

Date Mailed to Parties:

EXHIBITS

For Petitioner

- P-1 Shut-Off Notice for O.G. from Elizabethtown Gas Company
- P-2 Shut-Off Notice for O.G. from PSE&G

For Respondent

- R-1 Summary of File, postmaster returned mail, dated November 20 and December 7, 2017, stating building to be vacant, proof of delivery to Carteret address, UPS Tracking label to Carteret Address, picture of trailer in Carteret, picture of car, and picture of mailbox at Elizabeth address.
- R-2 Notice of Final Ineligibility
- R-3 2018-2019 Budget Worksheet
- R-4 Letter from respondent's Counsel regarding tuition