

C.M., ON BEHALF OF MINOR CHILDREN, :
J.M., E.M., AND E.M., :
PETITIONER, :
COMMISSIONER OF EDUCATION
V. :
DECISION
BOARD OF EDUCATION OF THE TOWNSHIP :
OF SPRINGFIELD, UNION COUNTY, :
RESPONDENT. :

SYNOPSIS

In April 2018, *pro se* petitioner appealed the determination of the respondent Board that her children are ineligible for a free public education in respondent's school district. Petitioner contended that she is domiciled in Springfield, but had been staying with her father in Union on and off to help out after the passing of her mother. The results of two residency investigations conducted by the Board indicated that petitioner and her children do not reside in Springfield. The Board filed a counterclaim for tuition. A hearing in this matter was held on June 11, 2018.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a), children 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; the domicile of an unemancipated child is that of her parent, custodian or guardian; representatives of the Board testified credibly that two residency investigations were conducted, both of which indicated that petitioner and her children were not residing in Springfield, but instead were living in Union with petitioner's father; petitioner's testimony included numerous inconsistent statements, as well as an admission that she had leased the Springfield house to tenants effective March 1, 2018. The ALJ concluded that petitioner failed to prove by a preponderance of credible evidence that she and her children were domiciled in Springfield; therefore, the minor children are not eligible for a free public education in respondent's schools. The ALJ ordered C.M. to pay the Board tuition in the total amount of \$19,367.63 for the period of the children's ineligible attendance in Springfield schools, and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, and adopted the Initial Decision as the final decision in this matter.

<p>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.</p>

C.M., ON BEHALF OF MINOR CHILDREN, :
J.M., E.M., AND E.M., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP :
OF SPRINGFIELD, UNION COUNTY, : DECISION
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The parties did not file exceptions.

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain her burden of establishing that she was a domiciliary of Springfield for the 2017-2018 school year. The Commissioner further concurs with the ALJ's conclusion that the minor children were, therefore, not entitled to a free public education in the District's schools 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 children were ineligible to attend school in Springfield. Therefore, the Board is entitled to tuition reimbursement in the amount of \$19,367.63 (\$90.02 per day each for J.M. and E.M., and \$85.27 per day for E.M. for 73 days) for the time period from February 27, 2018 through the end of the 2017-2018 school year, during which time petitioner's minor children were ineligible to attend school in respondent's district.

¹ The Commissioner was not provided with a transcript of the June 11, 2018 hearing at the OAL.

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 \$19,367.63 for tuition costs incurred during the time period in which J.M, E.M., and E.M. were ineligible to attend school in Springfield. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: November 1, 2018

Date of Mailing: November 1, 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 06664-18

AGENCY DKT. NO. 89-4/18

C.M., ON BEHALF OF MINOR CHILDREN,

J.M., E.M., AND E.M.,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWNSHIP

OF SPRINGFIELD, UNION COUNTY,

Respondent.

C.M., petitioner, pro se

Kerri A. Wright, Esq., and Janelle Edwards-Stewart, Esq., for respondent
(Porzio, Bromberg & Newman, attorneys)

Record Closed: August 27, 2018

Decided: September 18, 2018

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner C.M. challenges the action of the Board of Education of the Township of Springfield (Board) removing her three children from the Springfield Public Schools.

By letters dated March 22, 2018, the superintendent of schools notified the parents of J.M., E.M., and E.M. that at the March 19, 2018, Board meeting, the Board determined that their children were not entitled to attend school in the Springfield School District. On April 16, 2018, petitioner filed a Pro Se Residency Appeal with the Department of Education. The Board filed its answer on May 7, 2018. On May 9, 2018, the Department 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 hearing was held on June 11, 2018. Thereafter, the undersigned received a letter, with attachments, from the Board's attorney regarding emails the Board's attorney received from petitioner. A telephone conference was held on June 13, 2018, to discuss petitioner's intention. In furtherance of the telephone conference, the Board sent petitioner a settlement agreement and consent order for signature. However, the documents were never signed, and additional letters received from the Board's attorney on August 24, 2018, and the petitioner on August 27, 2018, revealed that the parties were at an impasse. As a result, the record was closed on August 27, 2018.

FACTUAL DISCUSSION AND FINDINGS

Petitioner testified on her own behalf. Matthew Clarke, Janet Pacheco, and James Post testified on behalf of the Board.

Preliminary Facts

After due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following preliminary facts:

C.M. is the mother of J.M. (grade 8), E.M. (grade 7), and E.M. (grade 3). (R-6.) The older two children attend middle school, and the youngest child attends elementary school. C.M. is married to the children's father, S.M., but S.M. resides in Garwood with a friend. C.M.'s father resides in Union.

Janet Pacheco has been employed by the Springfield Board of Education as the Director of Human Resources and Professional Development since July 2017. In October 2017, the Board commenced a residency investigation, which was conducted by investigator James Post. Post was retired from the Newark Police Department as a captain after thirty years and has been employed by the Board as a residency investigator for four years. Post determined that the children did not reside in Springfield. Post provided two reports to Pacheco via email, on October 31, 2017, and November 3, 2017. (R-7; R-8.)

A closed-session residency hearing was conducted by the Board on December 4, 2017. The closed-session minutes reflect, inter alia, that petitioner had communicated the following to the Board:

We don't live in Springfield all the time
Stay with [C.M.'s] father in Union from time to time (mother
passed during summer, stays with father to comfort)
Separated with father who resides in Garwood with a friend

[R-2.]

After the residency hearing, the Board determined that "in light of [C.M.'s] circumstances, E.M., E.M., and J.M. would be allowed to remain in District as long as [C.M.] remained domiciled in Springfield and that herself as well as the children slept in Springfield," and "the Board advised [C.M.] that they would continue to monitor [C.M.] and her children to determine their residency." (R-5.)

In February 2018, the Board commenced a follow-up residency investigation, which was also conducted by Post. Post again determined that the children did not

reside in Springfield. Post provided a report to Pacheco via email, on February 22, 2018. (R-9.)

A closed-session residency hearing was conducted by the Board on March 19, 2018, and the closed-session minutes reflect, inter alia, that petitioner had communicated the following to the Board:

[Attorney]: How often do you stay in Springfield?
[C.M.]: Last week, 3 times.
[Attorney]: How many times over the past couple of months?
[C.M.]: 3 times.
[Attorney]: Where do the children get ready for school?
[C.M.]: Either in Springfield or [S.'s].
[Attorney]: Did you receive the February 27th letter?
[C.M.]: Yes, but didn't bother to read it.
[Attorney]: On multiple occasions, you were observed coming out of the Union address, not Springfield. Can you address the discrepancy?
[C.M.]: We were in Union, but bad timing. You came on the wrong days to visit.

[R-4.]

The Board passed a resolution authorizing removal of the children from the Springfield Public Schools.

Petitioner's Pro Se Residency Appeal, ostensibly signed on April 10, 2018, states: "I have been staying with my father to help him on and off."

Testimony

Matthew Clarke

Clarke has been employed by the Springfield Board of Education as the business administrator and board secretary for more than fifteen years.

The first residency investigation commenced in 2017, and a closed-session hearing was held on December 4, 2017. At that time, the information provided by the petitioner was that her uncle was residing in the house and she was going back and forth between Springfield and Union because her mother had passed away and she was comforting her father. Petitioner was advised that she would have to reside in the Springfield home and that the investigator would return in the future to verify residency.

A second investigation commenced in 2018, and a closed-session hearing was held on March 19, 2018. At that time, the information provided by the petitioner was that she had stayed at the Springfield house three times in the last week, and three times over the past couple of months. The Board determined that petitioner did not reside in Springfield.

Clarke attended both closed-session residency hearings, took notes, and prepared the minutes. No evidence was presented that C.M. was domiciled in Springfield. Clarke prepared the minutes of both meetings. (R-2; R-4.)

The tuition rates for the 2017–2018 school year depend upon the student's grade level. For grades six through eight, the cost per pupil is \$16,205. For grades one through five, the cost per pupil is \$15,350. The total number of school days from February 27, 2018, the date of the Board's ineligibility letter, and the end of the school year, with adjustments for holidays, snow days, and make-up days, is 73 days. The total cost for an elementary-school student is \$15,350, which when divided by 180 is \$85.27 per day (rounded down). The total cost for a middle-school student is \$16,205, which when divided by 180 is \$90.02 per day (rounded down). The cost per day for all three students per day is \$265.31.

Janet Pacheco

Pacheco was present for the December 4, 2017, hearing. C.M. informed the Board that she was residing in Union due to the passing of her mother over the summer to comfort her father, who was having a hard time with the passing of his wife. C.M. provided some documentation to prove that she owns the house in Springfield and that

she goes back and forth and had every intention to return to the Springfield house. The Board was compassionate due to C.M.'s circumstances and the passing of her mother, but C.M. was advised that she had to reside in Springfield. C.M. was also advised that the Board would monitor the family to make sure they were residing in Springfield.

Pacheco was present for the March 19, 2018, hearing. C.M. informed the Board she had stayed three times in Springfield within the past week and within the past month, and that the children stayed either with her or with their father.

Pacheco learned that there is a new family residing in the Springfield house, consisting of a husband, wife, and three children (tenants). The wife contacted Pacheco, and advised that their lease commenced on March 1, 2018, and advised that C.M. and her children reside in Union, not in Springfield.

James Post

Post surveilled all three locations: Springfield, Union, and Garwood. He never saw C.M.'s or S.M.'s vehicles in Springfield. The routine he observed on numerous occasions was C.M. leaving Union with the children in the morning and driving them to school.

Post was asked by the superintendent last Thursday to respond to the Springfield house and verify who was residing there and for how long. Post responded to the Springfield house Thursday night, but no one was home. He was able through other sources to get a telephone number for the tenants, and spoke with the wife later that evening by telephone. The wife advised that she had a one-year lease, commencing March 1, 2018. The wife also advised that her husband used to perform lawn maintenance for C.M. in Springfield and C.M.'s father in Union.

Post located another source, who advised that a family had moved into the Springfield house and that C.M.'s family had not lived in the Springfield house for two years.

C.M.

Pertinent portions of C.M.'s testimony are as follows:

Also, they were talking about the family that moved in. I told them at the second hearing that I would be moving out and that [S.M.] would not be moving in until June or July or August in the summer. That family is a family friend and they are having a house built and yes they needed a place to stay so while I am . . . I . . . I have the paperwork to fill out so that they can live in the . . . because you can live in Union for free and go to Springfield. So I'm in the process but was going to wait until the hearing was over with and also she was very upset with me because the lease that she wanted me to sign doesn't even have a town. It's not even . . . not even . . . it's not even a complete . . . it doesn't . . . like Springfield is nowhere on the form at all. . . . They were well aware that I was moving out and that [S.M.] would be moving in in the summer. I told them that.

Q: The family that is living there now, when did they move into the house?

C.M.: March 1st.

Q: So have you resided in the Springfield home since March 1st?

C.M.: No, and I told them I wouldn't be.

Q: Where do your three children live?

C.M.: Between their father and myself.

Q: So the three children currently live in either Garwood or Union?

C.M.: Correct.

Q: But not in Springfield?

C.M.: Correct.

Q: No, I'm asking you about the March 19th hearing with the Board of Ed.

C.M.: Correct.

Q: Do you recall that hearing?

C.M.: No. Yes, [unintelligible] the hearing, yes.

Q: Do you recall telling the Board of Education at that time you were still living in the home at [Springfield address]?

C.M.: No.

Q: So you don't recall telling the Board that you had stayed there in that home on three occasions over the past week?

- C.M.: No. She said weekly how often do you stay there.
- Q: But by that time, you had already moved out of that home –
- C.M.: And I told you I was.
- Q: It's your testimony that you told the Board you had already moved out of that home on March 19th?
- C.M.: Yes.
-
- Q: When did you move out of the home?
- C.M.: March.
- Q: On what date specifically?
- C.M.: I don't recall.
- Q: At the time of the Board's hearing, you did not live in that home in Springfield?
- C.M.: Was that? When was it? Was that in March?
- Q: March 19th.
- C.M.: Then no.
- Q: And at the time that you filed your petition with the Department of Education you did not live in that home in Springfield, correct?
- C.M.: This one here? No. Like I said, I had started it way before.
- Q: And today, as you testified, you do not live in that home in Springfield?
- C.M.: Correct.

Petitioner presented the following documentation at the hearing: a 2017 final/2018 preliminary tax bill and 2017 property-assessment card reflecting that the Springfield residence is owned by C.M. and S.M. at the Springfield address; an April 26, 2018, to May 15, 2018, bank statement reflecting C.M.'s address as Springfield; March 8, 2018, to April 5, 2018, and April 6 to May 3, 2018, Jersey Central Power and Light bills reflecting C.M.'s address as Springfield; March 7, 2018, to April 5, 2018, and April 6, 2018, to May 4, 2018, PSE&G bills reflecting C.M.'s address as Springfield; and a Homeowner's Application for the period February 14, 2018, to February 14, 2019, reflecting "owner-occupied." Petitioner denied that the tenant's lease has the Springfield house address written on it, and also denied that the lease was signed.

Additional Findings of Fact

A credibility determination requires an "over-all evaluation of the testimony in light of its rationality or internal consistency and the manner in which it hangs together with

other evidence.” Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). For “testimony to be believed, it must not only proceed from the mouth of a credible witness, but must be credible in itself.” Spagnuolo v. Bonnet, 16 N.J. 546, 554–55 (1954). It must be “such as the common experience and observation of mankind can approve as probable in the circumstances.” Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). “The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.) (citation omitted), certif. denied, 10 N.J. 316 (1952).

Clarke and Pacheco attended both residency hearings and concisely and credibly testified as to the information conveyed by C.M., which was also memorialized in the meeting minutes. Additionally, Post credibly testified that he never observed the parents’ vehicles in Springfield, but instead had on numerous occasions observed C.M. leaving Union with the children in the morning and driving them to school. Unfortunately, petitioner’s testimony was overborne by the record, including her numerous inconsistent statements, the testimony of the Board’s witnesses, and petitioner’s own admission that she had leased the Springfield house to tenants, effective March 1, 2018. Petitioner was not forthcoming about her residency at the Board hearing on March 19, 2018, or in her Pro Se Residency Appeal, dated April 10, 2018, and there was sufficient evidence in the record to support that petitioner and her children were not residing in Springfield at the time the superintendent issued the February 27, 2018, ineligibility letter. Accordingly, I credit the testimony of the Board’s witnesses and **FIND** that petitioner and her children were not residing in the Springfield house since at least February 27, 2018.

LEGAL ANALYSIS AND CONCLUSION

Public schools are free to persons over five and under twenty years of age who are domiciled within the school district or are kept in the home of another person domiciled within the school district and supported by such other person gratis as if he were such other person’s own child. N.J.S.A. 18A:38-1(a). If the 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 and the child is not kept in the home of another person domiciled within the school district and supported by such person gratis as if the child was the person's own child, 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 parent or guardian is entitled to a hearing before the board and, if in the judgment of the board, the parent or guardian is not domiciled within the district or the child is not kept in the home of another person domiciled within the school district and supported gratis, the board may order the transfer or removal of the child from school. Ibid. The parent or guardian may contest the board's decision before the Commissioner within twenty-one days of the date of the decision and is entitled to an expedited hearing. Ibid. The parent or guardian has the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in the statute. Ibid.

Pursuant to N.J.A.C. 6A:22-3.1(a)(1), a student is eligible to attend a school district if he or she is domiciled within the school district, and a student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district.

"Domicile" is defined as "the place where [a person] has his [or her] true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has an intention of returning." T.B.W. ex rel. A.W. v. Bd. of Ed. of the Township of Belleville, Essex County, 1998 N.J. AGEN LEXIS 122, Agency Dkt. No.1 159-5/96, 1998 WL 668678 (N.J. Adm. June 18, 1998). As the court noted in Collins v. Yancey, 55 N.J. Super. 514, 520-21, 151 A.2d 68 (Law Div. 1959), a person may have several residences or places of abode, but only one domicile at a time. Id.

[D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist., 366 N.J. Super. 269, 273-74 (App. Div. 2004).]

The record is clear that petitioner's children were not domiciled in Springfield, because the Springfield house had been leased to tenants and they could not return to the house during the lease term. I therefore **CONCLUDE** that petitioner has failed in her burden to prove by a preponderance of the evidence that her children were domiciled in Springfield. Accordingly, I further **CONCLUDE** that petitioner has failed to

prove by a preponderance of the evidence that her three children were eligible for a free education in Springfield as of February 27, 2018.

Tuition is sought by the Board for the period of ineligible attendance. Where, as here, the evidence does not support the claims of the parent, the Commissioner of Education is authorized to assess tuition prorated to the time of the student's ineligible attendance in the schools of the district, and tuition is 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. N.J.S.A. 18A:38-1(b)(2).

There were 73 school days from February 27, 2018, the date of the Board's ineligibility letter, through and including the last day of school. The total 2017–2018 school-year cost is \$16,250 for a middle-school student and \$15,350 for an elementary-school student. Accordingly, the tuition calculation is as follows:

The applicable per-pupil cost for the 2017–2018 school year for J.M. (Grade 8) was 16,205, or \$90.02 (rounded down by Clarke) per day; 73 days at \$90.02 per day totals \$6,571.46.

The applicable per-pupil cost for the 2017–2018 school year for E.M. (Grade 7) was 16,205, or \$90.02 (rounded down by Clarke) per day; 73 days at \$90.02 per day totals \$6,571.46.

The applicable per-pupil cost for the 2017–2018 school year for E.M. (Grade 3) was \$15,350, or \$85.27 (rounded down by Clarke) per day; 73 days at \$85.27 per day totals \$6,224.71.

In view of the foregoing, I **CONCLUDE** that petitioner should pay to the Board tuition in the amount of **\$19,367.63** for the period of her three children's ineligible attendance during the 2017–2018 school year. I further **CONCLUDE** that J.M., E.M., and E.M. should be disenrolled from the Springfield Public Schools.

ORDER

It is **ORDERED** that petitioner's Petition of Appeal be and hereby is **DISMISSED**.

It is further **ORDERED** that C.M. pay to the Board tuition in the amount of **\$19,367.63** for the period of her three children's ineligible attendance in the Springfield Public Schools during the 2017–2018 school year, and that J.M., E.M., and E.M. be disenrolled from the Springfield Public Schools.

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.

September 18, 2018

DATE



KELLY J. KIRK, ALJ

Date Received at Agency:

September 18, 2018

Date Mailed to Parties:

mm

APPENDIX

Witnesses

For Petitioner:

C.M.

For Respondent:

Matthew Clarke

Janet Pacheco

James Post

Exhibits

For Petitioner:

None

For Respondent:

- R-1 Policy 5111
- R-2 Closed-Session Minutes, December 4, 2017
- R-3 2017–2018 Estimated Tuition Rates
- R-4 Closed-Session Minutes, dated March 19, 2018
- R-5 Extract of Minutes, dated March 19, 2018
- R-6 Student Contact Summaries
- R-7 Email from Post to Pacheco, dated October 31, 2017
- R-8 Email from Post to Pacheco, dated November 3, 2017
- R-9 Email from Post to Pacheco, dated February 22, 2018
- R-10 Letter from Superintendent to C.M. (Springfield), dated February 27, 2018
- R-11 Letter from Superintendent to C.M. (Union), dated February 27, 2018
- R-12 Letter from Superintendent to S.M. (Garwood), dated February 27, 2018

R-13 Certified mail receipts for February 27, 2018, letters

R-14 Final Notice of Ineligibility, dated March 22, 2018

R-15 (Not in evidence)