

New Jersey Commissioner of Education
Final Decision

M.R., on behalf of minor child, N.R., Petitioner, v. Board of Education of the City of Elizabeth, Union County, Respondent.
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Synopsis

Petitioner appealed the determination of the respondent Board that his child was ineligible to receive a free public education in respondent's school district. Petitioner asserted that he is domiciled in Elizabeth and that his daughter spent most of her time with him during the relevant time period, from November 2018 through her graduation from high school in June 2019. The Board contended that a residency investigation had demonstrated that M.R. lived in East Orange, and N.R. lived in Union with her mother; the Board filed a counterclaim for tuition.

The ALJ found, *inter alia*, that: the testimony provided by M.R. at hearing in this matter was credible, and no persuasive evidence to the contrary was presented by the Board; M.R. resides in Elizabeth in a shared apartment situation, and both his name and his daughter's name appear as residents on the property lease; both M.R. and L.R., the mother of N.R., gave credible testimony describing the time spent by N.R. between their two homes; N.R. did share her time between the separate domiciles of her two parents, but primarily spent four nights per week in Elizabeth during the school year. The ALJ concluded that M.R. is domiciled in Elizabeth, and has met his burden of demonstrating that N.R. was properly enrolled in the Elizabeth public schools and eligible for a free education therein. The ALJ ordered that the Board's demand for tuition set forth in its counterclaim be dismissed; further, as N.R. has graduated from high school, the continued free attendance in the Elizabeth public schools requested in the petition is now moot. The petition was dismissed.

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

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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September 19, 2019

New Jersey Commissioner of Education
Final Decision

M.R., on behalf of minor child, N.R.,

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.¹ The parties did not file exceptions.

Upon review, the Commissioner agrees with the Administrative Law Judge (ALJ) that petitioner sustained his burden of demonstrating that he was domiciled in Elizabeth from November 30, 2018 through the end of the 2018-19 school year. As such, the minor child, N.R., was entitled to a free public education in the District's schools during that time. Additionally, the Commissioner agrees with the ALJ that the issue of N.R.'s continued free attendance in the District is moot as she has graduated from high school.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The Board's counterpetition for tuition is dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: September 19, 2019
Date of Mailing: September 20, 2019

¹ The Commissioner was not provided with a transcript of the August 7, 2019 hearing at the OAL.

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 03909-19

AGENCY REF. NO. 33-2/19

M.R., ON BEHALF OF MINOR CHILD, N.R.,

Petitioner,

v.

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

Respondent.

M.R., pro se

Christina DiPalo, Esq., for respondent (La Corte, Bundy, Varady and Kinsella,
attorneys)

Record Closed: August 7, 2019

Decided: August 12, 2019

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, M.R., appeals the determination of respondent, the Elizabeth Board of Education, that he is not domiciled in its district. The Board had determined that his daughter was ineligible to attend the public schools, and counterclaims for tuition.

Petitioner filed an appeal with the Commissioner of Education (the Commissioner) on February 13, 2019. The Board filed an answer on March 4, 2019, and the contested case was transmitted to the Office of Administrative Law (OAL), where it was filed on March 20, 2019. The case was scheduled for hearing on April 24, 2019, and May 3, 2019. The April date was adjourned at the request of the Board. The Board then requested an adjournment of the May 3, 2019, date, and the matter was rescheduled for July 10, 2019. This date was again adjourned at the request of the Board. All adjournments were granted with petitioner's consent.

The hearing ultimately proceeded on August 7, 2019; the parties presented documentary and testimonial evidence and the record closed. In the interim, N.R. graduated from high school. M.R. thus no longer seeks his daughter's continued attendance in the Elizabeth schools. The Board continues to press its entitlement to tuition under N.J.S.A. 18A:38-1. The Board contests M.R.'s residency in Elizabeth for the period from November 30, 2018, until N.R.'s graduation from high school in June 2019.

FINDINGS OF FACT

On November 30, 2018, the Board sent a Notice of Initial Determination of Ineligibility to M.R. at an address it had on file in East Orange. The letter was signed for by "R," M.R.'s last name.³ A Board level residency hearing took place on January 28, 2019. Investigator William Buteau was present at the Board hearing, and related that M.R. had advised that he lived in Elizabeth with his girlfriend L.P. M.R. produced a lease that listed himself and N.R. as occupants of the apartment. His driver's license, however, bore the East Orange address. When asked for his Elizabeth address at the Board hearing, M.R. initially offered the incorrect street number; he later corrected himself. After hearing Buteau's testimony, M.R. told me he made this error because the Board hearing was a frightening and unfamiliar situation, and he was stressed and confused. M.R. seemed similarly stressed and uncertain about the process when he appeared at the OAL.

³ M.R.'s mother lives at that address and has the same last name.

Buteau testified that he conducted surveillance at the Board's request on January 29, 2019, and January 30, 2019. He observed a vehicle owned by L.R., N.R.'s mother, transport N.R. from Union to school in Elizabeth both mornings. Based on Buteau's findings, and on the information supplied at the hearing, the Board determined that M.R. resided in East Orange, and that N.R. resided with her mother in Union. On February 5, 2019, the Board wrote to M.R. and advised that the Board had determined that he did not reside in Elizabeth, and that N.R. was not eligible to attend the public schools. Importantly, I **FIND** that the sole basis expressed in the Notice of Final Ineligibility for his daughter's removal was M.R.'s purported domicile outside of Elizabeth. The concern that N.R. resided with her mother went entirely unmentioned. The Notice advised M.R. that he had a right to appeal to the Commissioner. N.R. appealed the findings in the February 5, 2019, letter; N.R. remained in school in Elizabeth in the interim as required by law.

M.R. appeared at the OAL hearing with L.R. He explained that together he and L.R. had decided that their daughter should live with him in Elizabeth. N.R. was not having a successful experience in the Union schools, where she had attended high school previously. M.R. has lived in Elizabeth since October 2017; N.R. started to attend school in Elizabeth at that time. Until 2016 he had lived in Union, and then temporarily relocated to Berkley Heights before moving to Elizabeth.

M.R. produced a lease between L.P. and Elizabeth Gardens, LLC, for the period from February 1, 2018, until February 1, 2019. Although he is not a signatory to that lease, M.R.'s name and that of his daughter appear as additional occupants. A similar one-year lease was executed on February 1, 2019. M.R. indicated however, that he has lived at the address noted on the lease with L.P., who he described as a friend, since October 2017. He shares the rent for the apartment. While M.R. stated that he pays half of an \$1,100 per month rental fee, the two leases reflected entirely different rental amounts: \$1,270 per month in 2018, and somewhat curiously, only \$1,025 per month in 2019.

M.R. also produced three 2019 bills for his Visa account, all with the same Elizabeth address as that on L.P.'s lease. He provided me with a copy of his driver's license and explained that when he appeared at the residency hearing before the Board, his license reflected the East Orange address where his mother resides. M.R. stated that he has not resided with his mother since 1989, but never changed the address on his license. In an effort to avoid any further confusion about where he lives, M.R. changed his license in June 2019 to reflect the Elizabeth address.

M.R. explained the living arrangements once N.R. came to live with him in Elizabeth. He was emphatic that she usually stayed with him during the week and spent only weekends with her mother in Union. He stated that N.R. spent Monday through Thursday nights at his home. Both M.R. and L.R. readily admitted that there were occasional times when N.R. would spend the night mid-week with her mother. But L.R. urged that this would happen no more than one or two times per month. During the summer, N.R. would spend more time with her mother in Union.

M.R. seemed genuinely confused by the Board's cross-petition for tuition. He asserted without equivocation that he lived in Elizabeth, and that his daughter spent most of her time with him there during the relevant time period. He urged that he brought her to Elizabeth because she had been bullied in Union, and the schools there seemed powerless to rectify the situation. M.R. was incredulous that there would be any reason why his daughter could not attend school in Elizabeth. He was firm that his only objective in having his daughter to live with him in Elizabeth was to obtain a proper education for his child, and that he was not trying to cheat anyone.

A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Our courts have held that "credibility findings . . . are often influenced by matters such as observations of the character and demeanor of witnesses . . . that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1998). M.R. showed an inability to recall some details; for example, the rental amount quoted at the hearing was not the sum reflected on the leases. This was reminiscent of his inability to correctly offer the

correct street address at the Board level hearing. But overall, I found his assertion that he lived in Elizabeth believable and I heard no persuasive evidence to the contrary. Board Investigator Buteau attempted to raise some question about whether N.R. spent most of her time in Elizabeth, but he offered nothing to support the Board's finding that M.R. himself did not reside in Elizabeth.⁴ Indeed, since the Board had directed him to conduct surveillance, Buteau could have easily followed M.R. and offered proof that M.R. did not spend the night in Elizabeth. It is noteworthy that no such evidence was presented. I **FIND** that M.R. resides in Elizabeth at the address reflected on the lease he presented at the hearing. I likewise believed both M.R. and L.R. when they described the time spent by N.R. between their two homes. I **FIND** that N.R. shared her time between her parents' homes, but primarily spent four nights per week in Elizabeth during the school year.

The Board produced a budget worksheet that reflected the daily rate for high school students, and also shared a school calendar. Per Buteau's testimony, I **FIND** that the Board seeks tuition reimbursement for 125 school days at a tuition rate of \$79.79 per day, for a total sum of \$9,973.75.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

Public schools are required to provide a free education to individuals between the ages of five and twenty years 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 he is absent, he has the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is that of her parent, custodian or guardian. P.B.K. ex rel minor child E.Y. v. Bd. of Educ. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001).

⁴ Buteau's surveillance proof that on two nights in January 2019 N.R. spent school nights in Union with her mother was consistent with her parents' testimony that she did sometimes stay with her mother mid-week, albeit infrequently.

Where a local board determines that a child is not properly domiciled in its district, N.J.S.A. 18A:38-1(b)(2) provides a right of appeal to the parents 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 subsection.

I **CONCLUDE** that M.R. is a domiciliary of Elizabeth. Since the determination of the Board was based on a finding that he did not reside in Elizabeth, I further **CONCLUDE** that M.R. has met his burden of demonstrating that N.R. was properly enrolled in the Elizabeth public schools and was eligible for a free education.

Due process required that the Board provide M.R. with any and all bases for its determination of ineligibility; as its determination that he did not reside in Elizabeth was the only basis expressed in its February 5, 2019, Notice of Final Ineligibility, my analysis can end here. But in the interest of thoroughness, I will note that the administrative code offers guidance where, as here, a child shares her time between divorced or separated parents who live in two different school districts. N.J.A.C. 6A:22-3.1(a)(1)(i) provides that

1. 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.

i. When a student's parents or guardians are domiciled within different school districts and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year. This subparagraph shall apply regardless of which parent has legal custody.

This regulation evinces a regulatory recognition that in today's world custody arrangements are often changing and fluid and are often determined by parents

informally and without court intervention. The regulation in essence allows divorced parents to informally decide where their child will attend school. Since the evidence revealed that N.R. spent more nights than not in Elizabeth during the school year, N.J.A.C. 6A:22-3.1(a)(1)(i) makes it plain and I **CONCLUDE** that she was domiciled in Elizabeth from November 2018 until she graduated from high school in June 2019.

Having determined that N.R. was eligible for school attendance from November 30, 2018, until the end of the school year in June 2019, I **CONCLUDE** that there is no basis for the award of tuition sought by the Board's counterclaim, and it should be dismissed.

ORDER

Based on the foregoing, together with the record as a whole, I **ORDER** that the Board's demand for tuition as set forth in its counterclaim be **DISMISSED**. Insofar as N.R. has graduated from high school, the relief sought by the petition, that is, continued free attendance in the Elizabeth public schools, is moot and likewise is **DISMISSED**.

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.

August 12, 2019



DATE

ELLEN S. BASS, ALJ

Date Received at Agency:

August 12, 2019

Date Mailed to Parties:

sej

APPENDIX

Witnesses

For Petitioner

M.R., pro se

L.R.

For Respondent

William Buteau, Investigator

Exhibits

For Petitioner

P-1 Lease

P-2 Driver's license

P-3 Visa Bill

P-4 Visa Bill

P-5 Visa Bill

P-6 Lease

For Respondent

R-1 Investigatory Report with attachments

R-2 Notice of Final Ineligibility

R-3 Tuition Rates

R-4 School calendar