

New Jersey Commissioner of Education
Final Decision

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| <p>N.M., on behalf of minor children, N.M. and K.M.,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>Board of Education of the City of Elizabeth, Union County,</p> <p style="text-align: center;">Respondent.</p> |
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Synopsis

Petitioner filed a pro se petition challenging the determination of the respondent Board of Education of the City of Elizabeth (Board) that her minor children, N.M. and K.M., were ineligible to receive a free public education in respondent's school district from December 8, 2021 through the end of the 2021-2022 school year. Petitioner asserted that she and her children lived with her mother at an address in Elizabeth. The Board contended that a residency investigation concluded that petitioner and her children actually reside at an address in East Orange. The Board filed a counterclaim for tuition for the period of ineligible attendance. Petitioner failed to appear at the scheduled hearing and offered no explanation for her failure to attend.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A. 18A:38-1(a)* and *N.J.A.C. 6A:22-3.1(a)*, public schools are free to any person over five and under twenty five years of age who is domiciled within the school district; pursuant to *N.J.A.C. 6A:22-6.2.*, if a student does not have a right to attend the school district, the Commissioner may assess tuition; in this case, a preponderance of evidence demonstrates that the petitioner and her children were not domiciled in Elizabeth during the relevant time period; and petitioner supplied no compelling proof of domicile in Elizabeth despite requests to produce required documentation of residency. The ALJ concluded that N.M. and K.M. were not eligible to attend school in Elizabeth from December 8, 2021 through the end of the 2021-2022 school year. Accordingly, the ALJ ordered petitioner to pay the Board tuition in the amount of \$19,335.80 for the period of N.M. and K.M.'s ineligibility from December 8, 2021 through June 20, 2022, as well as \$79.90 per child for each school day attended beyond that date for the remainder of the 2021-2022 school year.

Upon review, the Commissioner concurred with the ALJ that petitioner failed to sustain her burden of establishing that she was domiciled in Elizabeth from December 8, 2021 through the end of the 2021-2022 school year. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and petitioner was ordered to reimburse the Board for tuition costs as outlined herein. The petition was dismissed.

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| <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> |
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192-22

OAL Dkt. No. EDU 00653-22

Agency Dkt. No. 240-12/21

New Jersey Commissioner of Education

Final Decision

N.M., on behalf of minor children,
N.M. and K.M.,

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. 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 was a domiciliary of Elizabeth from December 8, 2021 through the end of the 2021-2022 school year. The Commissioner further concurs with the ALJ's conclusion that minor children N.M. and K.M. 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 child was ineligible to attend school in the District. Therefore, the Board is entitled to tuition reimbursement in the amount of \$19,335.80 for the period from December 8, 2021 through June 20, 2022, plus \$79.90 per child for each school day

attended from June 20, 2022 through the end of the school year, during which time petitioner's minor children were ineligible to attend school in Elizabeth.

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 \$19,335.80 for the period from December 8, 2021 through June 20, 2022,¹ plus \$79.90 per child for each school day attended from June 20, 2022 through the end of the school year, for tuition costs incurred during the time period in which the minor children were ineligible to attend school in Elizabeth. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 10, 2022
Date of Mailing: August 10, 2022

¹ This calculation is based on a daily tuition rate of \$79.90 and 121 school days of ineligible attendance per child. The Commissioner notes that these figures were derived from testimony presented to the ALJ during the hearing. However, a transcript of the testimony was not provided to the Commissioner, nor did the record contain any certification verifying the tuition rate or number of days of ineligible attendance. Therefore, the Commissioner relies on the ALJ's findings of fact.

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 00653-22

AGENCY DKT. NO. 240-12/21

N.M. ON BEHALF OF MINOR CHILDREN N.M. & K.M

Petitioner,

v.

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

Respondent.

N.M. petitioner, pro se

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

Record Closed: June 21, 2022

Decided: June 28, 2022

BEFORE: **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

Petitioner, N.M. is the mother of minor children N.M. and K.M. who are students in the Elizabeth Public School District (District). From December 8, 2021, until now, K.M. and N.M. were not domiciled in the District. Should public school be free to K.M. and N.M. in the District for this period? No. Public school shall be free only to a minor who is domiciled within the school district. N.J.S.A. 18A:38-1(a).

PROCEDURAL HISTORY

On November 11, 2021, the Elizabeth Board of Education (Board) initially determined that K.M. and N.M. were not domiciled within the District, offered to conduct a residency hearing before the Board, and directed petitioner to present residency proofs to its investigator. Petitioner did not seek a residency hearing.

On December 8, 2021, the Board rendered a final decision, advising N.M. that neither child could attend public schools in the District because their domicile was not in Elizabeth. The District deemed petitioner's proofs insufficient. If petitioner did not remove the children from the District's schools and appealed the determination, the children could remain, but the District would seek per diem reimbursement for their education.

On December 11, 2021, petitioner appealed that determination, and the Board filed a counterclaim for tuition reimbursement. On January 19, 2022, the Department of Education, Office of Controversies and Disputes, transmitted the case 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 February 11, 2022, I scheduled a pre-hearing conference, but neither party attended. On February 24, 2022, I held an initial pre-hearing conference during which the parties agreed to exchange discovery by March 21, 2022, and I would schedule

another pre-hearing conference on March 30, 2022. At petitioner's request, I rescheduled the March 30, 2022, conference for April 4, 2022. Yet, she did not appear.

I scheduled the hearing for June 20, 2022, and issued a pre-hearing Order dated April 5, 2022, sent via email and regular mail. The Order also extended discovery until June 1, 2022 and required the parties to submit exhibits by June 10, 2022. The District complied, but petitioner supplied no discovery or exhibits.

On June 20, 2022, I conducted the hearing. This tribunal waited thirty minutes, but petitioner did not sign onto the zoom hearing despite separate notice. Petitioner did not contact the OAL to explain her absence, and I closed the record on June 21, 2022.

FINDINGS OF FACT

Based on the evidence the Board submitted and having considered its sufficiency and the opportunity to assess the witness' credibility, I **FIND** the following as **FACT**:

Beginning in November 2021, the Board's residency investigator explored the domicile of K.M., attending the District's School Number Twenty-Nine, and N.M., attending the District's School Number One. The principal received emails from teachers noting that the children told teachers and friends that they lived in East Orange. On picture day, K.M. filled her address on the form as being in East Orange. However, petitioner enrolled the children using an address in Elizabeth. Petitioner does not explain this discrepancy.

The District's residency investigator for four and one-half years, Vito Tropeano, is a former police officer and was straightforward in his testimony. Tropeano credibly described the steps he took to investigate this case. In addition to the form completed by K.M., and emails reporting statements by the children, he also reviewed attendance records revealing excessive missed school days or tardy arrivals for both children. According to the attendance records, K.M. had thirty absences and twelve tardiness

notations during the 2021-22 school year. N.M. had twenty-seven absences and thirty-seven tardiness notations for the 2021-22 school year.

Tropeano also went to the property in Elizabeth multiple times, and no one ever answered. He also spoke to the property management office for the home. Notably, petitioner is not on the lease. Instead, the lease is in petitioner's mother's name. Tropeano notes that the Elizabeth address is walking distance from N.M.'s school, and when leaving school, Tropeano observed N.M. walking in the opposite direction away from that address.

The District supplied N.M. with a computer-type device for school work that allows the District to "ping" or track its location. The device records note its frequent use at the school at 250 Broadway in Elizabeth and the East Orange address written on the picture record completed by the student and used for mailings to petitioner. N.M. also used the device a few times at a non-specific location in Elizabeth, like a hot spot. However, the device's location and use history do not identify the Elizabeth address used to enroll petitioner's children during the three months tracked.

On March 21, 2022, Tropeano observed the Elizabeth residence starting at 7:45 a.m., before school hours, noting only one vehicle present belonging to petitioner's mother. N.M. was not at school by 8:10 a.m. While watching the home, Tropeano saw no one leave. Tropeano learned that petitioner's friend dropped N.M. off at school at 8:45 a.m., after the start of school. In other words, N.M. was not at the Elizabeth residence before being dropped off at school.

Tropeano sent eligibility correspondence to petitioner at both addresses on November 12, 2021, and December 8, 2021. The East Orange address is an apartment complex, and the security desk signs for mail deliveries to residents. The East Orange complex security desk signed for both letters addressed to petitioner. Petitioner signed for the November 12, 2021, correspondence to the Elizabeth address where her mother

resides. However, the December 8, 2021, correspondence to the same address was undeliverable.

Tropeano explains that the District requires at least five documents to establish residency in the District. The District expects to see indicia of residence like a lease or property utility bills, but petitioner supplied none connecting her to ownership or rental of the Elizabeth property.

Further, Tropeano reviewed materials received from petitioner, which he describes as insufficient. Petitioner has a driver's license with the Elizabeth address issued in June 2020 and supplied two bank statements from November 2021 with that same address. Still, petitioner's mother lives at the Elizabeth address, and petitioner could have used this as a mailing address. Although the petitioner emailed the District that her mother would send the District a certified letter explaining petitioner's living situation, the District received none.

Petitioner supplied no additional supporting materials in this case despite knowing that the District considered her proofs inadequate.

The District charges a per diem pupil general education rate of \$79.90. To June 20, 2022, one hundred twenty-one school days expired, totaling \$9,667.90 per student. Eight additional days remain in this school year. Thus, through the hearing date, the District is owed \$19,335.80 for educating N.M. and K.M., who remain enrolled in general education in the Elizabeth Public School District.

To date, petitioner has made no payments to the District since its demand on December 8, 2021, to either remove N.M. and K.M from the District or pay the per diem amount.

CONCLUSIONS OF LAW

Public school shall be free to a minor who is domiciled within the school district. N.J.S.A. 18A:38-1(a). A student is domiciled in a school district if his parent or guardian has a permanent home in the district such that “the parent or guardian intends to return to it when absent, and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.” N.J.A.C. 6A:22-3.1(a)(1); State v. Benny, 20 N.J. 238, 250 (1955). New Jersey has consistently held that the domicile of the child follows the domicile of the parent. Shim v. Rutgers, 191 N.J. 374, 399 (2007). Establishment of a domicile is an act of volition. Matter of Unanue, 255 N.J. Super. 362, 375 (Law Div. 1991). “[A] choice of domicile by a person, irrespective of the motive, will be honored by the court, provided there are sufficient objective indicia, by way of proofs, supporting the actual existence of that domicile.” Id. at 376.

If a student does not have a right to attend the school district, the Commissioner may assess tuition. See N.J.A.C. 6A:22-6.2.

Where a local board of education seeks removal of a student, the parent may appeal to the Commissioner of Education. N.J.S.A. 18A:39-1(b)(2). In the proceeding before the Commissioner, the parent has the burden of proof by a preponderance of the evidence that the child meets eligibility requirements for a free education. Ibid. 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. Ibid.

In this case, I **CONCLUDE** that a preponderance of the evidence demonstrates that neither K.M. nor N.M. are domiciled in Elizabeth or were domiciled in the District when Elizabeth commenced its investigation. Indeed, I **CONCLUDE** that petitioner supplied no compelling proof of her children’s domicile in Elizabeth on balance to the District’s investigatory findings. Thus, I **CONCLUDE** that the Board is entitled to prevail as a matter of law given my findings of fact and the tuition petitioner owes the District is clear. Therefore, I **CONCLUDE** that petitioner owes the Board \$19,335.80 for the

period of N.M. and K.M.'s ineligibility from December 8, 2021, through the scheduled hearing date of June 20, 2022; and \$79.50 for each child for school days attended beyond the hearing date, for the remainder of the 2021-22 school year.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that petitioner owes the Board \$19,335.80 for the period of N.M. and K.M.'s ineligibility from December 8, 2021, through the scheduled hearing date of June 20, 2022; and \$79.50 for each child for school days attended beyond the hearing date, for the remainder of the 2021-22 school year.

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.



June 28, 2022
DATE

NANCI G. STOKES, ALJ

Date Received at Agency:

June 28, 2022

Date Mailed to Parties:
ljb

June 28, 2022

APPENDIX

WITNESSES

For Petitioner:

None.

For Respondent:

Vito Tropeano

EXHIBITS

For Petitioner:

None

For Respondent:

R-1. Emails to Legal Department

R-2. Student N.M.'s Photo Order Form

R-3. Residency Investigation Request Form

R-4. Notice of Initial Determination of Ineligibility for Student N.M.

R-5. Notice of Initial Determination of Ineligibility for Student K.M.

R-6. UPS packages to 144 South Harrison St., #404, East Orange, NJ and 172 Community Lane

R-7. Petitioner's Letter and Documents

R-8. Notice of Final Determination of Ineligibility for Student N.M.

R-9. Notice of Final Determination of Ineligibility for Student K.M.

R-10. Second Set of UPS packages to 144 South Harrison St., #404, East Orange, NJ and 172

Community Lane.

R-11. Pro Se Appeal

R-12. Student K.M.'s attendance records

R-13. Student N.M.'s attendance records

R-14. Student N.M.'s device records

R-15. Supplemental Report.