



State of New Jersey

DEPARTMENT OF EDUCATION

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PHILIP D. MURPHY
Governor

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Lt. Governor

ANGELICA ALLEN-MCMILLAN, Ed.D.
Acting Commissioner

April 20, 2023

VIA EMAIL ONLY

E.S. and S.C.



Brian Kane, Esq.
LaCorte, Bundy, Varady & Kinsella
989 Bonnel Court
Union, NJ 07083

Re: **E.C. and S.C., on behalf of minor children, C.C. and K.C. v. Board of Education of the City of Elizabeth, Union County, Agency Dkt. No. 100-4/23**

Dear Parties,

This matter arises from the determination of the Elizabeth Board of Education (Board) that petitioners do not meet the residency requirements of *N.J.S.A. 18A:38-1*. The petition of appeal in this matter was received by the Office of Controversies and Disputes, which processes petitions filed before the Commissioner pursuant to *N.J.A.C. 6A:3-1.3(a)*, via email on April 17, 2023. Accordingly, an acknowledgment was sent to the parties that identified April 17, 2023 as the filing date. Thereafter, the Board determined that, because the petition was filed more than 21 days after the Board issued the notice of ineligibility, it would not allow petitioners' minor children to continue to attend school in Elizabeth during the pendency of the proceedings.

Petitioners filed a motion for emergent relief, pursuant to *N.J.A.C. 6A:3-8.1(f)*, which the Board did not oppose. As part of their motion, petitioners included a shipping receipt that demonstrated that they had mailed the petition of appeal via United States Postal Service (USPS) Priority Mail, using a third-party shipping service called "Prime Postal Center." The tracking information demonstrates that the package was shipped on March 24, accepted by the USPS on March 25, and delivered to the Department of Education (DOE) on March 27, 2023. However, the tracking information listed the DOE's Office of Certification and Induction as the recipient, rather than the Office of Controversies and Disputes. Accordingly, the package containing the mailed version of the petition was searched for and located in the Office of Certification and Induction. The petition was enclosed in a plain white mailing envelope, which was correctly addressed by petitioners to the Office of Controversies and Disputes. However, Prime Postal Center placed the entire package in a USPS-supplied Priority Mail envelope and prepared an electronic shipping label which listed the recipient as the Office of Certification and

Induction. Whether this happened due to an autofill error or for some other reason, it is clear that the fault for the incorrect address lies with Prime Postal Center, not petitioners.

Upon review of petitioners' submission, I conclude that the filing date for the petition of appeal must be amended to March 27, 2023, the date that the petition was delivered to the Department of Education. Based upon this filing date, the petition was filed within 21 days of the Board's notice of ineligibility. Therefore, pursuant to *N.J.S.A. 18A:38-1*, petitioners' minor children may not be denied admission during the pendency of the proceedings.¹

The petition will be transmitted to the Office of Administrative Law for further proceedings regarding the merits of the underlying residency dispute. Minor children C.C. and K.C. are permitted to attend school in Elizabeth during the pendency of the proceedings.

Sincerely,



Angelica Allen-McMillan, Ed.D.
Acting Commissioner of Education

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¹ Because the Commissioner concludes that the petition was filed within 21 days of the notice of ineligibility, there is no need to reach a decision on petitioners' motion for emergent relief or to address the factors of *Crowe v. DeGioia*, 90 N.J. 126 (1982).