

New Jersey Commissioner of Education

Final Decision

V.B., on behalf of minor children, J.B., J.B., K.B, and K.B.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that her minor children were not entitled to a free public education in Elizabeth schools during the period from March 13 to April 25, 2023. The Board contended that V.B.'s children had transferred in and out of the District five times since 2017, and a residency investigation concluded that the family was not domiciled in Elizabeth during the period in question. The Board sought tuition reimbursement in the total amount of \$9,570.00 for the children's ineligible attendance during the 2022-2023 school year.

The ALJ found, *inter alia*, that: petitioner testified credibly that the address on her paperwork with the District included an incorrect apartment number, and she had lived on the third floor rather than the second floor, which is where the residency investigator visited to gather evidence that she did not live at the address provided; the Roselle address that the investigator contended is petitioner's actual address is the home of the children's paternal grandmother, where the children spent time but never slept overnight; petitioner submitted a current lease effective March 1, 2023, as well as a utility bill and driver's license with the same current address in Elizabeth as proof of her residency within the school district during the time in question; the District's investigator did not surveille petitioner's current address; and the Board failed to prove that the children were living at the grandmother's Roselle home. The ALJ concluded that petitioner met her burden of proof that the family is currently domiciled in Elizabeth and the children are eligible for a free education in Elizabeth schools. Accordingly, the ALJ determined that no tuition reimbursement is due to the District and ordered the reversal of the Board's residency determination.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion and adopted the Initial Decision of the OAL as the final decision in this matter. Accordingly, the petition of appeal was granted, and no tuition reimbursement is owed to the Board.

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.

209-23

OAL Dkt. No. 03209-23

Agency Dkt. No. 93-4/23

New Jersey Commissioner of Education

Final Decision

V.B., on behalf of minor children, J.R., J.R., K.B.
and K.B.,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

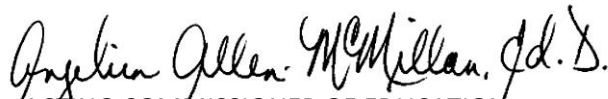
Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that V.B. and her four minor children were residents of the City of Elizabeth – and domiciled within the Board’s school district – during the period of March 13, 2023, to April 25, 2023. Thus, the Board is not entitled to reimbursement from petitioner for tuition costs.

Accordingly, the petition of appeal is hereby granted.

IT IS SO ORDERED.¹


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

Date of Decision: July 12, 2023

Date of Mailing: July 13, 2023

¹ 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 03209-23

AGENCY DKT. NO. 93-4/23

V.B. ON BEHALF OF MINOR CHILDREN

J.R., J.R., K.B. & K.B.,

Petitioner,

v.

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

Respondent.

V.B., petitioner, appearing pro se

Brian Kane, Esq. for respondent (LaCorte, Bundy, Varady & Kinsella)

Record Closed: June 1, 2023

Decided: June 9, 2023

BEFORE: **JOANN LASALA CANDIDO, ALAJ**

STATEMENT OF THE CASE

Petitioner, V.B., challenges the residency determination made by the Elizabeth Board of Education ("Board") about her minor children J.R., J.R., K.B. and K.B. On or about April 11, 2023, respondent submitted an Answer, which was filed with the

Commissioner of Education on April 12, 2023. 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 four children's' ineligible attendance in the Board's schools for the 2022-2023 school year for a total of twenty-four days.

The matter was transmitted to the Office of Administrative Law (OAL) on April 12, 2023, 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 June 1, 2023, and the record closed on that date.

The issues in this matter are whether the children 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.

TESTIMONY

William Buteau

Elizabeth Board of Education residency investigator William Buteau testified on behalf of the Board. Buteau investigates following up on tips and prepares reports. Buteau investigated the children in this matter because the children transferred in and out of the District five times since 2017. On May 18, 2023, Buteau drafted a Summary Report in the above-named matter. R-1 The Report outlines the number of times the children were in and out of the District and what triggered his investigation. The Transfer Information confirms each time the children were transferred. R-2 On September 20, 2022, a chain of emails from school officials shows an address for petitioner on Spring Street in Union. R-3 Petitioner forwarded an email to school officials attaching a confirmation from Capitol One on November 23, 2022, reflecting a change of address from Newark to Elizabeth. R-4

Buteau stated that based upon a background check of petitioner, her most current address lists that of an address in Newark. It also shows an address in Roselle that the Board states she resides in. R-5 On or about March 2, 2023, the Board filed two Notice of Initial Determination of Ineligibility letters for two of the students on each. The petitioner did not request a hearing on these documents. R-6 Buteau went to the addresses listed on a location report and he could not locate petitioner. He was told the petitioner did not live there by the neighbors. He would go to these addresses on weekdays. He did not go to the current address listed on the lease and utility bill. On or about March 13, 2023, the Board filed four Notices of Final Ineligibility, one for each student. The tuition for K.B. is \$99.75 per day for attending school while not a resident; the tuition for J.R. is \$99.63 per day; the tuition for K.F.B. is \$99.75 per day and the tuition for J.F.R. is \$99.63 per day while attending during ineligibility. These rates are applied depending on the grade level. R-7 Lastly, when the students turn on a school owned laptop computer, it reveals the location of the student. Prior to March 1, 2023, the computers reveal a Roselle address at times. Buteau was not available in the office to accept paperwork from the petitioner. The students were disenrolled on April 25, 2023. That was based upon twenty-four school days between March 13, 2023, to April 25, 2023. The total tuition the Board seeks is \$9,570.00 for the twenty-four days.

V.B.

V.B. credibly testified on her behalf. She states that the address on the Board paperwork for her Park Street address in Elizabeth reflects apartment #2 when in fact she lived on the third floor. The address in Roselle is the paternal grandmother's home and the children never sleep there. V.B. submitted the current lease, utility bill and driver's license for her apartment in Elizabeth. The children have not been permitted in school since the Easter break. V.B. attempted to drop off paperwork that the District did not accept to file a timely appeal. When she asked the investigator if he was in his office when she attempted ,to drop off paperwork he responded he was not.

The parties have stipulated the following **FACTS**.

1. On March 2, 2023, the Respondent Elizabeth Board of Education made its initial determination that the minor students J.R., J.R., K.B., and K.B. were not domiciled within the District and sent letters to that effect to the petitioner.
2. In the initial determination letters, the respondent notified the petitioner regarding the procedure for requesting a hearing before the Elizabeth Board of Education.
3. On March 13, 2023, the respondent Elizabeth Board of Education made its final determination that the minor students J.R., J.R., K.B., and K.B. were not domiciled within the District and sent letters.
4. In the final determination letters, the respondent informed the petitioner that if the petitioner did not file the appeal within twenty-one (21) days, the Petitioner's children would be removed from Respondent's schools.
5. In the final determination letters, the respondent informed the petitioner that petitioner may be assessed for tuition of the minor students at a per diem rate of \$99.75 per student for ineligible attendance.
6. On April 10, 2023, petitioner's residency appeal was filed with the Department of Education.

In addition to the stipulated **FACTS**, I heard testimony from petitioner whom I **FIND** was credible and forthcoming as well as from Investigator William Buteau and **FIND** additional **FACTS**:

1. Petitioner provided a residency Appeal dated March 21, 2023 and another on May 1, 2023. P-1
2. Petitioner, at the time the Board is assessing tuition for twenty-four days, provided proof by submitting a Lease agreement effective March 1, 2023 at an Elizabeth address as well as a utility bill and driver's license all reflecting the Elizabeth address. She resided on the third floor of her prior Elizabeth address and not the 2nd floor where Investigator Buteau checked.

3. Investigator Buteau did not investigate the current Elizabeth address.
4. The Roselle address is the paternal grandmother's address. The Board did not provide proof that the four children were viewed living at this address.
5. The respondent is seeking tuition for the four children for twenty-four school days for K.B. at \$99.75 per day; the tuition for J.R. at \$99.63 per day; the tuition for K.F.B. at \$99.75 per day and the tuition for J.F.R. at \$99.63 per day for a total of \$9570.00.

LEGAL ANALYSIS AND CONCLUSIONS

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).

Per N.J.S.A. 18A:38-1(b)(2), the resident "shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education". See, generally, D.L. v. Board of Educ. of Princeton Regional School Dist., 366 N.J. Super. 269 (App. Div. 2004).

Based upon the foregoing, I **CONCLUDE** that the petitioner has met her burden under N.J.S.A.18A:38-1(b) (2) that J.R., J.R., K.B. and K.B. are and have been domiciled in Elizabeth from March 13, 2023 to April 25, 2023, and therefore are entitled to a free education in the Elizabeth school district. V.B. provided the Lease agreement effective March 1, 2023, her driver's license, and her utility bill that all reflect the same address in Elizabeth where she was domiciled during the time the District is assessing tuition.

ORDER

Accordingly, it is hereby **ORDERED** that respondent's determination that V.B. and her four children, J.R., J.R., K.B. and K.B., are not residents and domiciliary in Elizabeth, New Jersey, and were not domiciled within its school district during the period of March 13, 2023 to April 25, 2023, is hereby **REVERSED**. It is further **ORDERED** that

respondent is not entitled to reimbursement from petitioner for the cost of audited tuition in the amount of \$9,570.00.

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 9, 2023

DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

June 9, 2023

Date Mailed to Parties:

June 9, 2023

EXHIBITS

For Petitioner

- P-1 Residency Appeals dated March 21, 2023 and May 1, 2023
- P-2 New Jersey Driver's License
- P-3 PSE&G Bill
- P-4 Lease Agreement effective March 1, 2023

For Respondent

- R-1 Elizabeth Board of Education Report dated May 18, 2023
- R-2 Transfer Records of J.R., J.R., K.B. and K.B.
- R-3 Correspondence from V.B. dated September 14, 2022
- R-4 V.B.'s letter Capitol One statement dated November 23, 2022
- R-5 Accurint Report for V.B.
- R-6 Notice of Initial Determination of Ineligibility for J.R., J.R., K.B. and K.B.
- R-7 Notices of Final Determination for J.R., J.R., K.B. and K.B.
- R-8 Laptop Surveillance for K.B. and K.B.
- R-9 Elizabeth Board of Education 2022-2023 school calendar

Bryant, Latoya [OAL]

From: Bryant, Latoya [OAL]
Sent: Friday, June 9, 2023 10:55 AM
To: Candice Hendricks; Jennifer Simons; Karin Molnar; oal decisions [OAL]; Rick Keiser
Subject: JUDGE CANDIDO'S INITIAL DECISION EDU 03209-23 V.B. obo minor children v. Elizabeth BOE
Attachments: EDU 3209-23 V.B. v. Elizabeth BOE-residency (002) (002).doc



*Latoya J. Bryant
Judicial Assistant to
JoAnn LaSala Candido, ALAJ
Kimberly A. Moss, ALJ
Nanci Stokes, ALJ*

Bryant, Latoya [OAL]

From: Microsoft Outlook
To: Jennifer Simons; Karin Molnar
Sent: Friday, June 9, 2023 10:55 AM
Subject: Relayed: JUDGE CANDIDO'S INITIAL DECISION EDU 03209-23 V.B. obo minor children v. Elizabeth BOE

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

[Jennifer Simons \(Jennifer.Simons@doe.nj.gov\)](mailto:Jennifer.Simons@doe.nj.gov)

[Karin Molnar \(Karin.Molnar@doe.nj.gov\)](mailto:Karin.Molnar@doe.nj.gov)

Subject: JUDGE CANDIDO'S INITIAL DECISION EDU 03209-23 V.B. obo minor children v. Elizabeth BOE

Bryant, Latoya [OAL]

From: Bryant, Latoya [OAL]
Sent: Friday, June 9, 2023 11:02 AM
To: vivian28@gmail.com; Brian Kane
Subject: Judge Candido's Initial Decision - EDU 3209-23 V.B. v. Elizabeth BOE-residency
Attachments: EDU 3209-23 V.B. v. Elizabeth BOE-residency (002) (002).pdf