

New Jersey Commissioner of Education

Final Decision

M.D., on behalf of minor child, D.G.,

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 child was not entitled to a free public education in Elizabeth schools during the 2022-2023 school year. Based on device export records linked to D.G.'s school-issued computer and a subsequent residency investigation, the Board contended that D.G. and her family were not living in Elizabeth but rather at an address in Union, New Jersey. The Board sought tuition reimbursement for the period of D.G.'s alleged ineligible attendance in Elizabeth schools.

The ALJ found, *inter alia*, that: petitioner M.D. testified credibly that prior to August 2022, she and her family lived in Elizabeth at a home they purchased in 1999; in March 2022, the family purchased a home on Park Place in Union, NJ, as an investment property with the intention of renting the house to tenants; because the house was in need of significant remodeling, the family moved to the Union house temporarily in August 2022 to oversee the ongoing construction; M.D.'s documentation all reflects her address as the Elizabeth house and the family was able to immediately return to living there once they realized that their occupancy at the Union house was endangering their residency status in Elizabeth; the family lived in the Union house from August 2022 until March 6, 2023, which was not long enough to trigger *N.J.A.C. 6A:22-3.1(a)(4)*. Accordingly, the ALJ concluded that petitioner satisfied her burden to prove by a preponderance of evidence that she was domiciled in Elizabeth during the 2022-2023 school year; D.G. was therefore eligible for a free education in Elizabeth during the same time period.

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 due 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.

250-23
OAL Dkt. No. 03077-23
Agency Dkt. No. 87-3/23

New Jersey Commissioner of Education
Final Decision

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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 M.D. and her minor child D.G. were domiciled in Elizabeth during the period from August 2022 to March 6, 2023 and that D.G. was therefore entitled to a free education in Elizabeth's schools during that period. 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: August 21, 2023
Date of Mailing: August 23, 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 03077-23

AGENCY DKT. NO. 87-3/23

M.D. ON BEHALF OF MINOR CHILD, D.G.,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY

OF ELIZABETH, UNION COUNTY,

Respondent.

M.D. and S.G.,¹ petitioners, pro se

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

Record Closed: June 15, 2023

Decided: July 14, 2023

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner M.D. challenges the action of the Board of Education of the City of Elizabeth (Board) removing her daughter, D.G., from the Elizabeth Public Schools.

¹ Although not reflected on the petition, S.G., the student's father, also appeared.

By letter dated March 6, 2023, Elizabeth Public Schools notified M.D. that its review of D.G.'s domicile/residency status indicated that she was not entitled to a public education in Elizabeth and that an investigation revealed that D.G. did not reside in Elizabeth. (R-8.) By letter dated March 13, 2023, Elizabeth Public Schools notified M.D. that D.G. was ineligible to attend Elizabeth Public Schools and would be removed. (R-11.) On March 29, 2023, petitioner filed a Pro Se Petition of Appeal with the Department of Education. The Board filed its answer on March 31, 2023. On April 10, 2023, the Department transmitted the case to the Office of Administrative Law 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 May 23, 2023. The Board submitted its post-hearing brief on June 14, 2023, and petitioner submitted her post-hearing letter on June 15, 2023, on which date the record closed.

FACTUAL DISCUSSION AND FINDINGS

M.D. testified on behalf of petitioner. Timothy Kirk 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:

M.D. is married to S.G. Their daughter, D.G., was enrolled in grade 11 at Elizabeth High School for the 2022–2023 school year. (R-1.) Prior to August 2022,

M.D., S.G., and their children (the family) were living at 500 Main Street, Elizabeth, New Jersey² (the Elizabeth house), which M.D. and S.G. purchased on April 5, 1999. (R-6.)

On March 30, 2022, M.D. and S.G. purchased 200 Park Place, Union, New Jersey³ (the Union house). (R-5.) The family began living at the Union house in August 2022.

Device export data records reflect that from December 1, 2022, to March 1, 2023, D.G.'s school-issued laptop was pinging from school and from the Union house, but not from the Elizabeth house. (R-2.)

Timothy Kirk has been employed by the Board as an investigator for approximately twenty months, and prior thereto he was an Elizabeth police officer for thirty-four years. On March 1, 2023, he commenced an investigation of the residency of D.G. after the legal department was advised by the technology department that D.G.'s laptop was pinging from Union and not from Elizabeth. On March 3, 2023, at 7:10 a.m., Kirk observed M.D. and D.G. exit the Union house and enter a 2009 Toyota registered to S.G. (R-3; R-7; R-14.) On March 6, 2023, at 7:12 a.m., Kirk observed M.D. and D.G. exit the Union house. (R-7.) Kirk prepared a Residency Investigation Report, dated March 31, 2023. (R-13.)

By Notice of Initial Determination of Ineligibility, dated March 6, 2023, Elizabeth Public Schools notified M.D. that its review of D.G.'s domicile/residency status indicated that she was not entitled to a free education in the district because of "Domicile/Residency not in the district" and that its investigation revealed that D.G. did not reside at the Elizabeth house. (R-8.) The notice further notified M.D. that she should contact Kirk on or before March 13, 2023, or email her proofs to indicate whether D.G. would be removed from the school and educated elsewhere, or if she would be requesting a hearing before the Board to demonstrate that D.G. was entitled to attend school in the district. (R-8.)

² A fictitious address is used for privacy.

³ A fictitious address is used for privacy.

On March 8, 2023, M.D. completed the district's Residency Verification Form and submitted the form, along with the required verifications. (R-9.) The verifications submitted included a "current property tax bill," "government issued identification," "current gas bill," "current water bill," and "pay stub from employer." (R-9; R-10.) The 2023 1st & 2nd Quarter Tax Bill for the Elizabeth house reflects the mailing address as the Elizabeth house. (R-10.) M.D.'s Auto Driver License, issued in November 2020 and expiring in January 2024, reflects the Elizabeth house as her address. (R-10.) The January 20, 2023, Elizabethtown Gas bill for the Elizabeth house reflects M.D.'s name, reflects the Elizabeth house as the mailing address, and reflects current charges of \$287.72. (R-10.) The January 27, 2023, Liberty Water Company bill reflects M.D.'s name, reflects the Elizabeth house as the mailing address, and reflects current charges of \$85.71. (R-10.) A paycheck stub for M.D., dated February 24, 2023, reflects the Elizabeth house as her mailing address. (R-10.) Petitioner did not request a hearing before the Board.

By Notice of Final Ineligibility, dated March 13, 2023, Elizabeth Public Schools notified M.D. that after review of the information she submitted it determined that D.G. was ineligible to attend school in Elizabeth, because:

YOUR DOMICILE/RESIDENCY IS NOT IN THE DISTRICT.
OUR INVESTIGATION REVEALS THAT YOU LIVE
OUTSIDE OF ELIZABETH.

[R-11.]

The notice further notified M.D. of her right to appeal, and of the daily tuition rate of \$99.63. (R-11.)

On March 29, 2023, petitioner filed a Pro Se Petition of Appeal (Petition) with the Department of Education. (R-12.) The Petition states, in pertinent part:

The Elizabeth School District has determined that my daughter . . . is no longer eligible to attend the . . . High School. This came to us as a surprise as our intentions

were not to move to the other house permanently. We have realized this was a mistake on our part.

In April 2022, we decided to purchase another house as an investment for the purpose of renting out the house. This house is located in Union and needs a lot of remodeling and fixing, therefore, we contracted staff to make those changes. In the meantime, we also remained at our home in Elizabeth. Initially, we thought it would be a smoother and quicker process, but unfortunately, we had a few hiccups along the way. This prompted the need to supervise and monitor the work being done in the new purchase. In order to do so, we had to make changes to our living arrangements for the months to come. We understand this took longer than we initially planned. In reality, it was more of a commodity for me as I work from home, and it was more comfortable for me to work and supervise the work being done in the Union house at the same time.

We truly did not know that by staying temporarily in the Union house while fixing it for rent, we were violating any rules. We still own and are living in our home in Elizabeth. Since receiving the letter, we realized that our actions may have led the Elizabeth School District to believe this was our permanent home and therefore, we have since left the Union house.

We really were not conscious of what effect staying in the Union house would have on our daughter's education. Her mental health is the most important thing for us and since receiving the news we have seen a great amount of stress added into her life. She is a junior in high school and has made many friends which gives her great happiness. We feel responsible for causing this confusion and making her feel unsure of what will happen due to our actions.

Please see attached for the supporting documents where it shows that nothing has been changed from our residency in Elizabeth. Feel free to request any other information needed.

....

I would like to please request that [D.G.] is reinstated at . . . High School. This is a learning experience for me and my family and we hope she does not get punished for a mistake we made to occupy two places at the same time. I confirm that we have been staying in Elizabeth since the notice we

received. I hope you find it in your heart to understand that this was not intentional and will not be repeated.

[R-12.]

The February 15, 2023, Elizabethtown Gas bill for the Elizabeth house reflects M.D.'s name, reflects the Elizabeth house as her mailing address, and reflects current charges of \$191.81. (R-12.)

An Individual Report Plus Associates (IRPA) printout reflects the Union house as a possible address associated with M.D. and reflects an absentee owner. (R-3.) The registration for S.G.'s 2009 Toyota reflects the Elizabeth house. (R-3.) The Union house Property Detail record reflects the Elizabeth house as the mailing address for the owner. (R-4.) The Elizabeth house Property Detail record also reflects the Elizabeth house as the mailing address for the owner. (R-4.)

Device export data records reflect that from December 1, 2023, through March 6, 2023, D.G.'s school-issued laptop was pinging at the Union house. (R-2; R-15.) Device export data records further reflect that from March 7, 2023, to May 1, 2023, D.G.'s school-issued laptop pinged from school and the Elizabeth house, and never pinged from the Union house, or from outside of Elizabeth. (R-15.)

Testimony

Timothy Kirk

The August 16, 2022, date reflected on the IRPA printout coincides with the dates the student's laptop started pinging from the Union house. The residency verifications submitted by M.D. were not sufficient to establish residency in Elizabeth because his investigation revealed that despite owning the Elizabeth house the family was staying at the Union house. He concluded that D.G. resided at the Union house. He still believes that the family's primary domicile was the Union house.

He drove by the Union house approximately three or four times in April and May before school but never saw the parents' cars at the Union house. He does not know if a vehicle was in the one-car garage. He never saw anyone inside the Union house. He has not seen anyone at the Union house since March 6, 2023, when petitioner received the notice, and there were no more laptop pings from Union. Since March 6, 2023, a few of the laptop pings are from the Elizabeth house and the others are from school. The laptop cannot be pinged if it is turned off.

Once the family received the March 6, 2023, notice, they may have returned to the Elizabeth house. He does not know for sure if the petitioner is back in Elizabeth, but the Board has not changed its position regarding residency. His determination was that from August 2022 to March 6, 2023, the family resided in Union. He visited the Elizabeth house once in April, between 11:00 a.m. and 1:00 p.m., but he did not observe the family vehicles there. He does not have any evidence that would refute petitioner's assertion in the Petition that since receipt of the notice the family is no longer living in the Union house. The laptop pings from Elizabeth, though not as frequently as it had pinged from Union. In Union, it pinged every day, but in Elizabeth, there are no pings sometimes for several days.

M.D.

They had initially intended for a contractor to manage the renovations, but the renovations commenced in June 2022, and it became too expensive, and they instead had to find various contactors for each project. She is employed full time, 9:00 a.m. to 5:30 p.m., but she has been working from home since the pandemic. The family began temporarily living in Union so she could manage the renovations work. She does not deny that her family started living in Union in August, but it was only temporary to manage the work being done, which she had expected to be completed in October. She apologizes to the Board because she did not know they were not allowed to do that. Work was being done on the first floor and basement, but not on the second floor. The basement was just finished, and she expects all the work to be completed in another month. She intends to rent the Union house after the renovations are complete.

Since her receipt of the notice, they returned to living only at the Elizabeth house and D.G. has been driven back and forth between the Elizabeth house and school daily. There have been no rental agreements on either house. D.G.'s laptop may be pinging less frequently than before because of this situation, as the uncertainty of possibly being removed from her school has negatively affected D.G., including her academic performance. D.G. was crying this morning about what might happen. She feels sad for her daughter because it was her decision to temporarily live in Union that has caused D.G. to be in this situation.

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) and (b)(1). 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 were 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 of Education 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. Where the evidence does not support the claims of the parent, the Commissioner 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. 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. A student is domiciled in the school district when his or her parent or guardian resides within the school district on an all-year-round basis for one year or more, notwithstanding the existence of a domicile elsewhere. N.J.A.C. 6A:22-3.1(a)(4).

“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. 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).]

Petitioner credibly testified that she and her husband purchased an investment home in Union and were in the process of renovating it, and to facilitate that process the family temporarily moved into the Union house. M.D.’s documentation all still reflects her address as the Elizabeth house and her testimony that she intended to return to the Elizabeth house when the renovations were complete on the Union house is corroborated by the family’s ability to immediately return to living in the Elizabeth house, which had not been rented out. There is no evidence that the family continued to live at the Union house after receiving the notice, as they have not been observed at the Union house and D.G.’s laptop never again pinged from the Union house but has pinged from the Elizabeth house. Moreover, as corroborated by the IRPA printout, the family was in the Union house from August 2022 until March 6, 2023, which was not long enough to trigger N.J.A.C. 6A:22-3.1(a)(4). Accordingly, I **CONCLUDE** that petitioner has satisfied her burden to prove by a preponderance of the evidence that she was domiciled in

Elizabeth and D.G. was therefore eligible for a free education in Elizabeth for the 2022–2023 school year.

ORDER

It is **ORDERED** that petitioner’s Pro Se Petition of Appeal be and hereby is **GRANTED**, and further **ORDERED** that D.G. is eligible to attend school in Elizabeth.

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 14, 2023 _____

DATE

KELLY J. KIRK, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

Witnesses

For Petitioner:

M.D.

For Respondent:

Timothy Kirk

Exhibits

For Petitioner:

None

For Respondent:

- R-1 Demographics
- R-2 March 1, 2023, email and device export data (December 1, 2023, through March 1, 2023)
- R-3 Individual Report Plus Associates
- R-4 Property Detail
- R-5 Deed (Union house)
- R-6 Deed (Elizabeth house)
- R-7 Investigator notes
- R-8 Notice of Initial Determination of Ineligibility, dated March 6, 2023
- R-9 Blank Residency Verification Form
- R-10 Completed Residency Verification Form and verifications
- R-11 Notice of Final Ineligibility, dated March 13, 2023
- R-12 Pro Se Petition of Appeal
- R-13 Residency Investigation Report
- R-14 Photographs
- R-15 Device export data (March 1, 2023, through May 1, 2023)