

New Jersey Commissioner of Education

Final Decision

S.M., on behalf of J.C.,

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 daughter – who has now reached the age of majority and graduated – was not entitled to a free public education in Elizabeth schools during the period from February 2023 through the end of June 2023. The Board contended that J.C. lived in Roselle during this period. Petitioner asserted that she and her daughter were domiciled in Elizabeth during the period in question; however, J.C. spends time before and after school at her grandmother’s home in Roselle because there is no internet service in the Elizabeth apartment. The Board sought tuition reimbursement for the period of J.C.’s alleged ineligible attendance in Elizabeth schools.

The ALJ found, *inter alia*, that: petitioner S.M. and her daughter, J.C., testified credibly that they moved back to New Jersey from Virginia prior to the start of J.C.’s junior year in high school; S.M. arranged to rent an apartment in Elizabeth, but the unit flooded prior to her occupancy and mother and daughter were then offered housing with J.C.’s aunt in her Elizabeth apartment; the apartment, however, had no internet service so J.C. used her laptop for schoolwork at her grandmother’s house in Roselle in the early mornings and after school; there is sufficient credible evidence that J.C. resided in Elizabeth even though she and her mother spent time with J.C.’s grandmother in Roselle for family meals and gatherings, for internet access, and for mutual care and support; working single parents often must call on family members to help out, but this does not constitute a factual predicate for concluding that J.C. resides in Roselle; further, J.C. was of majority age and could be domiciled in a residence separate from her parent; the Board’s case here relies solely on computer pings from J.C.’s computer at the Roselle house and infrequent surveillance of the two addresses, and was not adequate to prove that J.C. did not live in Elizabeth. The ALJ concluded that petitioner met her burden of proof to show residency in Elizabeth and reversed the Board’s decision that J.C. was not entitled to a free public education in Elizabeth schools.

Upon review, the Commissioner remanded this case to the OAL pursuant to *N.J.A.C. 1:1-18.7(a)* for the purpose of allowing the ALJ to make factual findings regarding two of the Board’s exhibits which were not addressed in the Initial Decision and which the Board contends prove that J.C. was living in Roselle and not Elizabeth during the period in question.

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.

New Jersey Commissioner of Education
Final Decision

S.M., on behalf of J.C.,

Petitioner,

v.

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

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by respondent pursuant to *N.J.A.C. 1:1-18.4*, have been reviewed and considered. Petitioner did not file a reply.

This matter concerns the Board's determination that J.C., who has reached the age of majority, was not domiciled in Elizabeth from February 2023 through the end of June 2023 and the Board's subsequent demand for payment of tuition in the amount of \$4,084.43. Petitioner appealed the Board's determination, claiming that she and her daughter resided in Elizabeth during the time period at issue, and the matter was transmitted to the OAL for a contested hearing. S.M., J.C., and the Board's investigator testified at the hearing held on July 6, 2023.

The Administrative Law Judge (ALJ) concluded that the very credible testimony of S.M. and J.C., coupled with documents in evidence presented by both parties, constituted sufficient credible evidence to establish that J.C. resided in Elizabeth during the time period in question even though she also spent time at a relative's home in Roselle before and after school. Consequently, the ALJ granted petitioner's appeal and denied the Board's counterclaim for tuition.

In their exceptions, the Board contends, among other things, that prior to the hearing, “J.C. provided her drivers [sic] license and bank statement which indicated her address was [in] Roselle.” Respondent’s Exceptions, at 3. The Board further contends that neither S.M. nor J.C. addressed these documents, marked in evidence as R-11 and R-12, during their hearing testimony.

Upon careful review of the record, the Commissioner finds that a remand of this matter is necessary pursuant to *N.J.A.C. 1:1-18.7(a)* because it is unclear from the Initial Decision whether the ALJ considered respondent’s exhibits R-11 and R-12. R-11 is a photograph of J.C.’s New Jersey Probationary Auto License, issued July 11, 2022, and lists her address as a relative’s home in Roselle. R-12 is a copy of J.C.’s monthly bank statement for April 2023 which also lists the same Roselle address. Because the record does not contain transcripts, the Commissioner is unable to determine whether these exhibits and their significance were addressed during the hearing. Moreover, neither R-11 nor R-12 are discussed in the ALJ’s Initial Decision.

For these reasons, the Commissioner remands the matter to the OAL for the purpose of allowing the ALJ to render factual findings pertaining to R-11 and R-12, to explain the weight she assigned to those exhibits, and to discuss the effect, if any, those exhibits had on her ultimate conclusions of law.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 22, 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 02774-23

AGENCY DKT. NO. 80-3/23

S.M. ON BEHALF OF MINOR CHILD J.C.,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY

OF ELIZABETH, UNION COUNTY,

Respondent.

S.M. and J.C., pro se

Brian Kane, Esq. for respondent Elizabeth Board of Education (LaCorte, Bundy,
Varady & Kinsella, attorneys)

Record Closed: July 6, 2023

Decided: July 19, 2023

BEFORE **GAIL M. COOKSON,** ALJ:

STATEMENT OF THE CASE

This matter involves an appeal by S.M. from the non-residency determination made by the Board of Education of the City of Elizabeth (Board) with respect to her daughter J.C., who has now reached the age of majority and graduated. Petitioner challenges the finding of the Board that they were not domiciled in the district and that J.C. was not entitled, therefore, to a free education.

PROCEDURAL HISTORY

By notice dated March 8, 2023, petitioner was notified that the Board's Legal Department had determined that J.C. be disenrolled from the high school on the basis that she did not live in Elizabeth but rather in Roselle. Petitioner filed a pro se Residency Appeal pursuant to N.J.S.A. 18A:38-1 and N.J.A.C. 6A:3-8.1 and 6A:22 with the Commissioner of Education (Commissioner) in a timely manner on March 21, 2023. On March 27, 2023, the respondent Board filed an Answer to the appeal with a Counterclaim for reimbursement from petitioner for the costs of tuition incurred by the attendance of her daughter in the Board's school district.

The appeal and counterclaim were transmitted by the Commissioner to the Office of Administrative Law on March 28, 2023, as contested matters in accordance with N.J.S.A. 52:14B-1 to -15. The case was assigned to me on April 3, 2023. I convened a case management telephone conference on May 8, 2023. The hearing was held on July 6, 2023, on which date the record closed.

FACTUAL DISCUSSION

As an initial matter, the following facts, while not the subject of a joint stipulation, were undisputed:

1. J.C. has a date of birth of November 6, 2004, and thus reached the age of majority prior to the undertaking of the residency investigation by the Board.
2. J.C. began attending Elizabeth High School in September 2021 for her junior and then senior years.
3. J.C. graduated on June 23, 2023, and will be attending Spelman College in the fall.
4. The residence at 607 E. Second Ave. (607 2nd), Roselle, is owned by J.C.'s grandmother P.S.

5. The residence at 1422 Lower Road (1422 Lower), Elizabeth, is an apartment rented by J.C.'s aunt (by marriage).

6. There is no residence at 1433 Lower Road; rather, that property is a cemetery and its association to this student was a clerical error of unknown origin.¹

Based upon 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 **FACTS**:

The Board disputes that J.C. is domiciled at her aunt's home at 1422 Lower and presented the testimony and investigative report of William Buteau in support of its disenrollment decision. Buteau has been employed by the Board as an investigator with the Legal Department for approximately six years. He received no training in this position except for the use of the CLEAR and ACCURINT software programs. Buteau has a high school education and worked for thirty years in the Elizabeth Police Department, achieving the rank of Detective.

Buteau was assigned the investigation of J.C. in February 2023 because the Board's Legal Department noticed that her school-issued laptop was often connected to the internet at a consistent location in Roselle. He reviewed her enrollment demographics and the documentation submitted from her enrollment at the beginning of the 2021-2022 school year.

Buteau testified that he conducted a visual surveillance of the two subject properties and persons related to the residency at those locations on February 17, March 23, 24, 27, 28, and then June 29, 2023. I note that the last date just listed is after the school year had ended and graduation had taken place. At that time, Buteau observed that the Volkswagen was parked in the Roselle driveway and there were graduation celebration balloons prominently displayed. On the earliest surveillance occasion, Buteau was able to identify, as an initial matter with some database searches and assistance, the three vehicles owned by petitioner and her mother. On March 23, he passed by at 4:04

¹ Actually, it is clear on S.N.'s Affidavit (R-2) that her address was 1422 Lower Road, so it probably was an inadvertent error during input by Board staff.

p.m. and saw the Honda Accord used by S.M. in the driveway. On March 24, he passed by again and saw the Volkswagen used by J.C. in the driveway at 7:33 a.m. On March 27, between 2:54 and 3:01 p.m., Buteau was at 607 2nd and observed J.C. leave that residence and drive to 1422 Lower. He requested to speak with her when they both arrived there, but J.C. felt that he should talk to her mother even though she was over the age of 18 at that point. On March 28, at 7:25 a.m., Buteau passed by 607 2nd again and saw the vehicles usually driven by mother and daughter there.

On the counterclaim for tuition asserted by the Board, Buteau testified that the per diem tuition cost for a high school child is \$99.63 and should be applied to the period from March 8, 2023, through the end of the school year. I **FIND** that this per diem rate is uncontested. Nevertheless, petitioner rightly points out that J.C. was disenrolled from Monday, March 13 through Friday, March 31, which was during the permitted twenty-one-day appeal period, contrary to the regulations. If I determine that I need to reach the counterclaim, I shall deduct these days from consideration.

J.C. and her mother S.M. both testified in support of the propriety of her enrollment in Elizabeth for her junior and senior years of high school. S.M. testified that she and her daughter returned to New Jersey from Virginia for the start of her junior year due to both the pandemic and a recent marital separation. S.M. had arranged to rent an apartment in Elizabeth and had registered her daughter in the District, but a flood had made that apartment unavailable. At that time, S.M.'s sister-in-law (J.C.'s aunt) offered to let them stay with her at the 607 2nd apartment. S.M. remained there until her grandmother (J.C.'s great grandmother) became ill. This elder family member came from Barbados to live with her daughter P.S., J.C.'s grandmother. At that time, S.M. moved from Elizabeth to the Roselle home in order to assist with her care. J.C. remained with her aunt in Elizabeth. Both S.M. and P.S. are employed in healthcare fields, but S.M. also moonlights as an Uber and Lyft driver.

J.C. testified that she lives with her aunt but also makes time to visit her grandmother's house to see her and her mother. She typically has breakfast over there but eats dinner more often with her aunt. J.C. has done well in high school, achieving a 4.3 GPA, and has been accepted into Spelman College in Atlanta, Georgia for the fall.

During high school, she was President of the National Honor Society and Secretary of both Student Government and Student Council. In addition, she worked weekends at the mall during the school year and held two jobs (i.e., seven days per week) during the summers, including full-time for the Elizabeth Recreation Department.

J.C. also explained that her aunt had no wi-fi connection in her apartment, so she often went to her grandmother's house not only to see her and her mom, but to use the internet there to complete her schoolwork. There were a few times when she connected to the internet while at 1422 Lower but that only occurred because she used her cell phone as a hotspot. J.C. used her 1422 Lower address on her job applications and for her payroll and tax information.

I **FIND** the testimony of S.M. and J.C. to have been very credible. For example, J.C. was almost of majority age by the start of her senior year and had use of her mother's Volkswagen to travel to her grandmother's and aunt's houses and to school, but there was insufficient or unsafe parking at the aunt's residence. Because the car was a lease, S.M. explained that she had required J.C. to park it most often at 607 2nd to save on the "dings" etcetera that could cause a problem at the lease termination.

I am not rejecting Buteau's investigation, but it only went so far. He never interviewed J.C.'s aunt, mother, or grandmother, or asked to inspect the bedrooms and closets for signs of residency. Buteau also never tested the wi-fi reception at that location. Further, he failed to account for summers, holidays or weekends on the internet access data. That data report clearly shows that J.C. is not at her grandmother's house every night but rather on average, only once or twice a week. I **FIND** that this is not indicative of living there throughout the school year. In fact, his own observations are confirmative of the fact that J.C. eats breakfast at 607 2nd but returns to 1422 Lower near the end of the afternoon.

I am also impressed by the fact that J.C. was obviously a very conscientious high school student and has been accepted to Spelman College in Atlanta, Georgia, the top ranked HBCU and one that is also highly ranked overall nationally. The Board should be proud of what J.C. has achieved and what she will undoubtedly contribute to society.

ANALYSIS AND CONCLUSIONS OF LAW

Persons over five and under twenty years of age who are domiciled within a school district may attend its public schools free of charge. N.J.S.A. 18A:38-1(a). For purposes of this subsection, the domicile of an unemancipated child is the domicile of the parent, custodian, or guardian. P.B.K. v. Tenafly Bd., 343 N.J. Super. 419 (App. Div. 2001). If the parent or guardian of a child attending school in the district is not domiciled within the district, the superintendent or administrative principal may apply to the board of education for the child's removal. N.J.S.A. 18A:38-1b.(2). No child shall be removed from school during the twenty-one-day period during which the parent or guardian may contest the board's decision or during the pendency of the proceedings before the Commissioner. Ibid. In a residency appeal, the parent has the burden of proof by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)(2). The legal standard to be applied is set forth in the regulation:

A student is domiciled in the district when he or she is living with a parent or legal guardian whose permanent home is located within the district. A home is permanent when 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:28-2.4(a)(1)(i)]

It has long been held that a person may have many residences but only one domicile. Somerville Bd. v. Manville Bd., 332 N.J. Super. 6, 12 (App. Div. 2000), *aff'd*, 167 N.J. 55 (2001). As incorporated in the regulation, the domicile of a person is the place where she has her true, fixed, permanent home and principal establishment, and to which whenever she is absent, she has the intention of returning, and from which she has no present intention of moving. Matter of Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), *aff'd*, 311 N.J. Super. 589 (App. Div. 1998), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051, 119 S.Ct. 1357, 143 L. Ed.2d 518 (1999). The acts, statements and conduct of the individual, as viewed in light of all circumstances, determine a person's true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959).

Where a person has more than one residence, the following factors are useful in determining his or her domicile: the physical characteristics of each place, the time spent and the things done in each place, the other persons found there, the person's mental attitude towards each place, and whether there is or is not an intention, when absent, to return. Mercadante v. City of Paterson, 111 N.J. Super. 35, 39-40 (Ch. Div. 1970), aff'd, 58 N.J. 112 (1971). A choice of domicile by a person, irrespective of his motive, will be honored by the court, provided there are sufficient objective indicia, by way of proofs, supporting the actual existence of that domicile." In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991).

Based upon the testimony and documents presented by each party, I **CONCLUDE** that there is sufficient credible evidence that J.C. resided at 1422 Lower Road even if she spent time at 607 2nd, as did her mother until an elderly family member took ill. The petitioners plainly spend time with J.C.'s grandmother both for common family meals and gatherings, e.g., graduation celebration after school ended, but also for internet access, and mutual care and support. This extended family assisted one another with responsibilities for supporting and nurturing J.C. To argue that children cannot be enrolled in a school district unless they are cared for before and after school and on weekends within that same school district would disenroll a substantial portion of our population. Working parents, especially single parents, often must call upon the volunteer services of grandmothers, cousins, or aunts to help. But the fact that J.C.'s family members help out with these types of responsibilities does not form the factual predicate for concluding that permanent residence exists in Roselle. Further, J.C. was of majority age and therefore, could be domiciled in a residence separate from her parent.

In sum, I **CONCLUDE** that the above-referenced testimonial descriptions by petitioner and her daughter of their daily routines were credible, made sense, and hung together. Accordingly, I **CONCLUDE** that petitioner has met the burden of proof on her appeal of the Board's non-residency and de-enrollment determinations. Therefore, I also **CONCLUDE** that the Board is not entitled to an award in its favor on the counterclaim for the full amount of the partial school year tuition cost.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is **ORDERED** that the relief requested by S.M. on behalf of J.C. be and the same is **GRANTED** and her residency appeal is **UPHELD**. The decision of the Board with respect to J.C.'s right to a free public education in Elizabeth is **REVERSED**. Accordingly, it is further **ORDERED** that respondent City of Elizabeth Board of Education's counterclaim for tuition reimbursement be and the same is **DENIED**.

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.



July 19, 2023
DATE

GAIL M. COOKSON, ALJ

Date Received at Agency: 7/19/23

Date Mailed to Parties: 7/19/23

id

APPENDIX

LIST OF WITNESSES

For Petitioners:

S.M.

J.C.

For Respondent:

William Buteau

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

P-1 J.C. Paystub

P-2 J.C. W-2

P-3 Elizabeth Department of Recreation Application, Summer 2022

For Respondent:

R-1 Petitioner J.C.'s Demographics

R-2 Residency Affidavit C – Temporary Housing, dated September 9, 2021

R-3 S.N. CLEAR Background Check

R-4 Electronic data of J.C.'s school laptop locations

R-5 Notice of Initial Determination of Ineligibility, dated February 23, 2023

R-6 Documents submitted by S.M. on behalf of J.C.

R-7 Notices of Final Ineligibility for J.C., dated March 8, 2023

R-8 Summary of Residency File Report, dated March 28, 2023

R-9 Petitioner J.C.'s CLEAR Background Check

R-10 Petitioner J.C.'s CLEAR Background Check for Elizabeth, NJ

R-11 Petitioner J.C.'s Driver's License

R-12 Petitioner J.C.'s Bank Statement S.M. on behalf of minor children, J.C.

R-13 Photograph Surveillance, dated June 7, 2023