

New Jersey Commissioner of Education

Final Decision

J.B., on behalf of minor children, C.B. and C.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 she and her family are not domiciled in Elizabeth and that her children are therefore not entitled to a free public education in Elizabeth schools. Petitioner admitted that she and her husband and children had been staying temporarily at a relative's home in Hillside due to a family emergency but had been forthcoming with the District as to the situation that necessitated their short-term relocation. Petitioner asserted that the family remains permanently domiciled in Elizabeth and are therefore entitled to attend school in the District. The Board filed a counterclaim demanding tuition repayment for the period since March 21, 2023.

The ALJ found, *inter alia*, that: the Board's residency investigator made only one visit to the petitioner's Elizabeth address and found no one at home in the late morning of February 1, 2023; the investigator further admitted that he had not interviewed any member of petitioner's family in reaching his determination that the family was no longer domiciled in Elizabeth; it is undisputed that petitioner and her family established their domicile in Elizabeth many years ago; petitioner and her husband both gave credible and compelling testimony as to the circumstances of their temporary relocation to Hillside because of a family emergency and their intent to keep Elizabeth as their permanent residence. The ALJ concluded that petitioner has proven by the preponderance of credible evidence that their residence remains in Elizabeth and their intention was always to return there as soon as the temporary family emergency was resolved. Accordingly, the minor children were entitled to a free public education in Elizabeth schools, and the Board's residency determination was reversed.

Upon review of the record, the Commissioner found 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 exhibit R-6, which appears to call into question petitioner's domicile in Elizabeth. Exhibit R-6 is not referenced in the Initial Decision and, because the record does not contain transcripts, the Commissioner is unable to determine whether this exhibit and its significance was addressed during the hearing. Accordingly, the Commissioner remanded this case to the OAL for the purpose of allowing the ALJ to render factual findings pertaining to the Board's exhibit R-6.

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.

292-23

OAL Dkt. No. 02537-23

Agency Dkt. No. 63-3/23

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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 the Elizabeth Board of Education (Board) pursuant to *N.J.A.C. 1:1-18.4*, have been reviewed and considered. Petitioner did not file a reply to the Board's exceptions.

Petitioner appealed the Board's determination that she and her minor children do not reside in Elizabeth. Following a hearing, the Administrative Law Judge (ALJ) concluded that the family had temporarily relocated away from their home in Elizabeth due to a family emergency, but that their residence remained in Elizabeth and that the minor children were, therefore, entitled to a free education in Elizabeth's schools.

In its exceptions, the Board argues that the ALJ did not properly consider proof of petitioner's residence in Hillside and gave too much weight to petitioner's testimony. The Board notes that petitioner attempted to register her children for school in Hillside and

provided multiple documents in support, including a sworn and notarized affidavit and change of address documents for a bank account, Verizon bill, and the Motor Vehicle Commission (Exhibit R-6). The Board further contends that a 14-month stay in in Hillside, encompassing the entirety of the 2022-2023 school year, should not be considered temporary for the purposes of establishing domicile. According to the Board, petitioner chose to move out of Elizabeth to Hillside, and there is no evidence that they were forced to relocate there.

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 exhibit R-6, which demonstrates that petitioner changed her address with multiple entities and swore to the Hillside school district that she and her children resided there. Exhibit R-6 is not referenced in the Initial Decision and, because the record does not contain transcripts, the Commissioner is unable to determine whether these exhibits and their significance were addressed during the hearing.

For these reasons, the Commissioner remands the matter to the OAL for the purpose of allowing the ALJ to render factual findings pertaining to Exhibit R-6, 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.


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

Date of Decision: September 29, 2023
Date of Mailing: October 2, 2023



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 02537-23

AGENCY DKT. NO. 63-3/23

J.B. ON BEHALF OF C.B. AND C.B.,

Petitioner,

v.

CITY OF ELIZABETH BOARD OF EDUCATION,

UNION COUNTY,

Respondent.

J.B., on behalf of **C.B.** and **C.B.** petitioner pro se

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

Record Closed: August 9, 2023

Decided: August 18, 2023

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

STATEMENT OF THE CASE

Petitioner J.B. (petitioner or J.B.) filed and perfected a Petition of Appeal with the New Jersey Department of Education on or about March 7, 2023, from the final determination of the City of Elizabeth Board of Education (“District” or “Board”) dated

February 24, 2023, that she and her family are not domiciled in the Elizabeth and that her children could not continue to attend its schools for free as residents of the District. The Board answered the petition and filed a counterclaim demanding tuition repayment for the period since March 21, 2023.

PROCEDURAL HISTORY

The Department of Education Office of Controversies and Disputes transmitted the Petition to the Office of Administrative Law (OAL) on or about March 22, 2023. After being assigned to this matter, I convened several telephonic conference calls to discuss preparation for the hearing and dates for same. An adjournment of one date was granted subject to the potential continued accrual of tuition reimbursement. The plenary hearing was held on August 9, 2023, on which date the record closed.

FACTUAL DISCUSSION

Based upon the testimony of the witnesses and the documentary evidence presented, and with the opportunity to assess the credibility of the witnesses, I **FIND** the following:

William Buteau testified for the Board.¹ He has been an Investigator with the District's Legal Department for approximately six years. Prior thereto, Buteau had been with the Elizabeth Police Department for thirty-one years, leaving at the rank of Detective. In January of this year, he was assigned to investigate the petitioner's daughters who attended sixth and ninth grades in the District. The investigation arose as a result of the recent usage by school administrators of the Absolute software; that is, electronic reports of where school-issued laptops are being utilized by students. In this case, those electronic details or "pings" indicated that petitioner's children were using their computers consistently from a location in Hillside. Buteau also reviewed the registration information for these students and undertook some online research of persons, vehicles, and addresses associated with them and their

¹ For clarity of presentation only and because petitioner is pro se, I had the District proceed first but the burden of proof remains on her.

family. Petitioner is registered with the school as living at 744 Trumbull Street, Elizabeth, New Jersey. On February 1, 2023, Buteau made his only visit to that location at approximately 10:00 or 11:00 a.m. No one was home and he made no contact with anyone at that time or since.

Buteau's research revealed that the house was owned by a woman whom he believed to be the grandmother of the students. He also traced the parents' vehicle registrations to an address in Mountainside. Buteau determined that the residence where the pings emanated most often, other than District facilities, was located at 1287 White Street in Hillside. The laptop usage appeared there on or about June 22, 2022. On February 7, 2023, the Legal Department issued Initial Notices of Ineligibility to petitioner alleging that her daughters lived outside the District and should be disenrolled. Final Notices were issued on February 24, 2023. Buteau did not write up his investigative report until May 31, 2023, after review of some documents submitted by petitioner in early April. Lastly, Buteau explained briefly how the tuition calculations were made based on the per diem rate and the number of days in the school year (75) since the issuance of the Final Notices.

On cross-examination and questioning from myself, Buteau acknowledged that he had interviewed no member of petitioner's family. He also clarified that the Elizabeth home was owned by petitioner's seventy-nine-year-old grandmother (the students' great-grandmother) and that petitioner's mother (the students' grandmother) also resided there.

Petitioner J.B. (Ms. B) and her husband J.B. (Mr. B) both testified at this hearing. Ms. B explained that they had always been forthcoming with the District as to a change in their family circumstances that necessitated that they stay at the Hillside residence on a temporary and emergency basis only. Mr. B's older brother – V.B. – resided there with his daughter. Their mother had also resided there until her death in October 2018, and it is her Estate that still owns the house. V.B. suffers from Huntington's disease, which is a neurodegenerative, progressive, and incurable condition. Only some years after their mother's death, Mr. and Ms. B became aware that V.B. was in arrears on the mortgage and that violations of odor ordinances had been issued to him. V.B. had been laid off in July 2022 due to his worsening condition and inability to do the work. He was collecting some

temporary disability income. They then realized that not only had his condition worsened but his living conditions had deteriorated to a shocking degree. The house was observed to be at an almost hoarder's level of clutter, mess, and disarray, and was unsanitary. Mr. B demanded that V.B.'s adult daughter vacate the premises; thereafter, he and petitioner began the long process of cleaning up the house, as evidenced by their before and after photos. There was some delay in this effort due to Ms. B being in a car accident last summer.

Mr. B described his brother as in denial and very uncooperative. While their sister, who suffered with the same genetic disease, had allowed her husband to become her power of attorney, V.B. refused to do similarly and has thus been unhelpful in pursuing Social Security or Medicaid benefits. Their plan is to relocate their brother to an assisted living facility. Although they have also considered relocating all of them back into 744 Trumbull, there is simply not enough room. They have listed the house for sale, which proceeds will be distributed pursuant to the Estate's instructions; however, Mr. B might forgo his portion if it is needed to help with V.B.'s care. They have also been looking for a larger temporary residence in Elizabeth until his brother can be placed in a care facility.

Mr. B also testified that because they were a tight-knit family, their daughters wanted to remain with their parents at the Hillside residence once it was liveable, and while he needed to be there to provide some care and stability for V.B. Both petitioner and her husband clearly stated their intent to remain residents of Elizabeth; that such has been their community for many years; and both daughters had proceeded through many school years in the District. They play in soccer leagues in the city, participate in parades, and have all their friends there.

On cross-examination, Mr. B explained that their personal vehicles are registered and insured at his business address but are not owned by the company. Although they had not had a formal lease for many years with petitioner's grandmother, petitioner and her husband had always contributed to the expenses at 744 Trumbull, providing \$400-500 cash to her grandmother every month.

I must make credibility determinations with regard to these potentially material facts. A credibility determination requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Daiichi Pharm. Co. v. Apotex, Inc., 441 F. Supp. 2d 672 (D.N.J. 2006). After carefully considering the testimonial and documentary evidence presented and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I am convinced that petitioner's testimony and that of her husband were very credible. Petitioners' testimony was sincere and forthright. As they stated, they were always upfront with the District as to what was happening and tried to fulfill all information requests. Accordingly, I **FIND** that petitioner and Mr. B have every intent to keep Elizabeth as their permanent residence.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

The District claims that petitioner can no longer establish domicile in Elizabeth because they have relocated to Hillside to the home of V.B. Petitioner claims that this is just the result of a confluence of unfortunate medical and legal concerns they have with V.B., whom they now have a moral obligation to assist in spite of his lack of cooperation and worsening condition, because there is no one else who can handle it all.

It is undisputed that petitioner and her family established their domicile in Elizabeth many years ago. The right to a thorough and free education in the district of one's New Jersey domicile is well settled. A.M.S. ex rel. A.D.S. v. Bd. of Educ. of City of Margate, 409 N.J. Super. 149, 160-61 (App. Div. 2009). Therein, the court stated:

N.J.A.C. 6A:22-2.1(b) requires school districts to adopt written policies and procedures related to student residency and to incorporate Department of Education (DOE) regulations pertaining to student residency into each district's policies and procedures. Moreover, in doing so, "a district board of education shall construe the provisions" of DOE regulations governing student residency "liberally so as to effectuate the right of students to a free public education."

The Legislature has provided that local boards of education are responsible for the education of school-age children who reside within their respective district. N.J.S.A. 18A:38-1. Narrow exceptions to the domicile rule are also provided when, among other things, the parent or guardian is a temporary resident of a district, N.J.S.A. 18A-38-1(d), or a parent moves between districts as a result of homelessness. N.J.S.A. 18A-38-1(f). In any event, a child's district of residence is generally determined based upon the district of residence of the child's parent or guardian. See, e.g., N.J.S.A. 18A:7B-12; N.J.S.A. 18A-38-1.

Generally, eligibility under the education laws and regulations is framed as, in relevant part:

A student is eligible to attend a school district if he or she is domiciled 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) (as amended 2013).]

It should be noted that the regulations had provided at the time of earlier decisions, e.g., K.L. v. Bd. of Educ., No. A-5671-07T1, 2010 N.J. Super. Unpub. LEXIS 11, at *9 (Super. Ct. App. Div. Jan. 4, 2010):

A student is domiciled in the school district when he or she is living with a parent . . . whose permanent home is located within the school 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:22-3.1(a)(1).]

Petitioner has asserted that she and her family intend to return to the 744 Trumbull home and had no intent to move from it but did so out of necessity temporarily both as executors of the Estate and as informal guardians of V.B. Yet, as we see, this regulation as

amended no longer encompasses the concept of “intent.” 45 N.J.R. 1209(a) (May 20, 2013).

It is clear that the determination of “necessity” here is fact sensitive, on which issue petitioner has the burden of proof. Hawthorne BOE v. Prospect Park BOE and Dept. of Educ., OAL DKT. NO. EDU 16270-13, Final Agency Decision (May 12, 2014) <http://njlaw.rutgers.edu/collections/oal/>>. In Hawthorne, there was no evidence that petitioner’s family was a victim of an abrupt change of circumstances. In clear contrast, the family’s circumstances here are clearly distinguishable because they did temporarily become transient due to several emergencies (hoarder household; uncooperative ill brother; need for assisted living). See also S.J. o/b/o V.J. v. Bd. of Educ. of S. Orange-Maplewood, EDU 5656-07, Initial Decision (January 22, 2008), adopted, Comm’r (March 3, 2008), <http://njlaw.rutgers.edu/collections/oal/>> (family evicted from apartment and then drifted around while living in a beauty salon, with a friend, and with child’s grandmother in an attic); A.B. v. W. Orange Bd. of Educ., EDU13330-09, Initial Decision (January 25, 2010), adopted, Comm’r (April 13, 2010), <http://njlaw.rutgers.edu/collections/oal/>> (single mother evicted after losing full-time job and thereafter alternated between apartments of several friends).

This is the case of temporary relocation away from one’s abode due to fire, storms or other natural disasters, or exigent family emergency. On the basis of the above-referenced facts and legal authority, I **CONCLUDE** that petitioner has proven by the preponderance of the credible evidence that their residence remains in Elizabeth and that they have an intent to return there as soon as this temporary family emergency is resolved. These students should be permitted to receive a free public education in the City of Elizabeth.

ORDER

Accordingly, it is **ORDERED** that petitioner’s appeal from the City of Elizabeth Board of Education residency determination is and the same is hereby **UPHELD** and the determination of the City of Elizabeth Board of Education on residency is **REVERSED**.

It is further **ORDERED** that the counterclaim of the City of Elizabeth Board of Education for tuition reimbursement 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.



August 18, 2023

DATE

GAIL M. COOKSON, ALJ

Date Received at Agency

8/18/23

Date Mailed to Parties:

8/18/23

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

J.B. (Mother)

J.B. (Father)

For Respondent:

William Buteau

LIST OF EXHIBITS IN EVIDENCE

For Petitioner

- P-1 GSMLS Listing
- P-2 Medical Prescription of Disability of V.B.
- P-3 Before and After Photographs
- P-4 Email Correspondence re Listing
- P-5 Family Texts re Habitability Issues, etc.
- P-6 744 Trumbull Payments in Lieu of Rent
- P-7 Correspondence with District, with Affidavits
- P-8 Worker Compensation and Accident documentation

For Respondent

- R-1 Elizabeth BOE Demographics Information on C.B. and C.B.
- R-2 Investigation Report of William Buteau, dated May 23, 2023
- R-3 Notices of Initial Determinations of Ineligibility, dated February 7, 2023
- R-4 Notices of Initial Determinations of Ineligibility, dated February 24, 2023
- R-5 Laptop Surveillance
- R-6 Petitioner's Proof of Residency
- R-7 2022-2023 Elizabeth BOE School Calendar