

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

In this matter on remand, *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 Commissioner remanded the matter to the OAL for the limited 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.

On remand, the ALJ found, *inter alia*, that: J.C.’s testimony regarding the exhibits in question indicated that Roselle was listed as the address on her driver’s license and bank account because her vehicle is leased and her mother wanted her to park the car at her grandmother’s house where parking is easier; further, J.C. experienced some issues with mail getting lost when sent to the Elizabeth address; J.C. used her Elizabeth address on other documents such as employment records; J.C.’s testimony made sense and was very credible; and there was no intent on the part of the petitioner and her daughter to evade school officials. The ALJ concluded that the petitioner met her burden of proof regarding J.C.’s residency in Elizabeth. Accordingly, the ALJ reversed the Board’s determination that J.C. was not entitled to a free public education in Elizabeth schools and denied the Board’s counterclaim for tuition.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ on remand and adopted the Initial Decision of the OAL as the final decision in this case. Accordingly, the petition of appeal was granted, and respondent’s counterclaim for tuition was dismissed.

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.

341-23

OAL Dkt. No. EDU 09106-23 (EDU 02774-23 on remand)

Agency Dkt. No. 80-3/23

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) issued July 19, 2023, respondent Board's exceptions thereto, and the Initial Decision of the OAL on remand issued October 13, 2023, have been reviewed and considered.

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 resultant demand for payment of tuition in the amount of \$4,084.43. The 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.

In an Initial Decision issued July 19, 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 contended, among other things, that prior to the hearing, "J.C. provided her driver's license and bank statement," marked in evidence as R-11 and R-12, "which indicated her address was [in] Roselle."¹ Respondent's Exceptions, at 3. The Board further contended that neither S.M. nor J.C. addressed these documents during their hearing testimony; however, the Commissioner could not verify same because the record does not contain the hearing transcripts. For these reasons, the Commissioner remanded the matter to the OAL pursuant to *N.J.A.C. 1:1-18.7(a)* 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.²

In response to the remand, the ALJ issued a supplemental Initial Decision on October 13, 2023, in which she rendered the additional factual findings requested by the Commissioner. Specifically, the ALJ found as fact that J.C. testified that she used her grandmother's Roselle address on her driver's license (as shown on R-11) and bank account (as shown on R-12) because

¹ 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.

² The Commissioner finds the remaining contentions in respondent's exceptions to be unpersuasive. Respondent seeks to rely primarily upon physical and electronic surveillance activities conducted by its investigator—some of which took place on weekends, holidays, and even after the school year ended. The Commissioner agrees with the ALJ, who thoroughly considered the relevant documentary evidence as well as the investigator's testimony, that his investigation was incomplete. The Commissioner finds that the information obtained by the investigator was, at best, inconclusive. Furthermore, the Commissioner rejects respondent's contention that petitioner's failure to call S.N. as a witness should result in an adverse inference. Aside from the fact that it does not appear from the record that respondent ever asked the ALJ to draw an adverse inference, there is nothing in the record to suggest that anything prevented respondent from calling S.N. as a witness had it wished to do so.

of where her mother wanted her to park her vehicle and because she experienced some issues with mail getting lost when sent to the Elizabeth address.³ The ALJ also found that J.C.'s Elizabeth address appeared on various documents including a pay stub, a W-2, and a job application, as shown on exhibits marked P-1, P-2, and P-3 in evidence. Moreover, the ALJ found that J.C.'s testimony regarding R-11 and R-12 was "very credible" and "made sense." Initial Decision (supplemental), at 2. In addition, the ALJ found that "J.C. made conscious, thought-out decisions every time she was required to provide an address to a third party" and that "[n]one of this was done to evade school officials." *Ibid.*

The Commissioner adopts the ALJ's Initial Decision issued July 19, 2023, as supplemented by the Initial Decision issued October 13, 2023, as the final decision in this matter. Upon consideration of the additional factual findings made by the ALJ, coupled with the ALJ's determination that J.C. testified very credibly regarding R-11 and R-12, the Commissioner is satisfied that petitioner's residency appeal should be granted.

When reviewing an ALJ's Initial Decision, the Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record." *N.J.S.A. 52:14B-10(c); Parsells v. Bd. of Educ. of Borough of Somerville, Somerset Cnty.*, 254 N.J. 152, 159 (2023) (holding that the ALJ's credibility findings are entitled to deference). "When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ's credibility findings that

³ In the Initial Decision issued July 19, 2023, the ALJ found that S.M. very credibly testified that she required J.C. to park her leased vehicle at the Roselle address because parking was insufficient or unsafe at the Elizabeth address, and S.M. was concerned about the vehicle acquiring damage.

control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole.” *Cavalieri v. Bd. of Trs. of Pub. Empl. Ret. Sys.*, 368 N.J. Super. 527, 537 (App. Div. 2004).

Following a careful review of the entire record, the Commissioner has identified nothing arbitrary, capricious, or unreasonable about the ALJ’s findings, which are adequately supported by sufficient, competent, and credible evidence. The Commissioner concurs with the ALJ that J.C. was domiciled in Elizabeth between February 2023 through the end of June 2023, and that J.C. was therefore entitled to a free education in Elizabeth’s public schools during that time period. Thus, the Board is not entitled to reimbursement from the petitioner for tuition costs.

Accordingly, the petition of appeal is hereby granted, and respondent’s counterclaim for tuition is hereby dismissed.

IT IS SO ORDERED.⁴


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

Date of Decision: November 20, 2023
Date of Mailing: November 22, 2023

⁴ 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
(SUPPLEMENTAL)

OAL DKT. NO. EDU 09106-23

AGENCY DKT. NO. 80-3/23

(ON REMAND)

OAL DKT. EDU 02774-23

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 and Kinsella, attorneys)

Record Closed: October 9, 2023

Decided: October 13, 2023

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

STATEMENT OF THE CASE

This matter involved 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

challenged 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 Initial Decision dated July 19, 2023, I ruled in favor of petitioner's appeal of the Board's residency determination. The matter was then reviewed by the Commissioner who determined on August 22, 2023, that the factual record was unclear as to two exhibits (R-11, R-12) that related to the assertion of residency in the district of Elizabeth. Accordingly, the matter was remanded to the OAL on September 13, 2023.

FACTUAL DISCUSSION

I will not burden the record with duplicative information from the record already admitted during the prior plenary hearing and evaluated in the Initial Decision.

I apologize to the Commissioner and the parties that I did not comment on and refer to Exhibits R-11 and R-12. In reviewing the record, it is clear to me and I **FIND** that J.C. testified that she used her grandmother's Roselle address on her driver's license (R-11) and bank account (R-12) because of where her mother wanted the vehicles parked and some issues with mail getting lost when addressed to 1422 Lower. She did use her 1422 Lower address on her job applications, and for her payroll and tax information.

I **FIND** the testimony of J.C. to have been very credible with respect to Exhibits R-11 and R-12. They made sense and it was clear that J.C. made conscious, thought-out decisions every time she was required to provide an address to a third party. None of this was done to evade school officials and I so **FIND**.

CONCLUSIONS OF LAW

Accordingly, I **CONCLUDE** that petitioner S.M. 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.



October 13, 2023

DATE

GAIL M. COOKSON, ALJ

Date Received at Agency: 10/13/23

Date Mailed to Parties: 10/13/23

id

APPENDIX

LIST OF EXHIBITS

All Exhibits were provided with the original Initial Decision EDU 02774-23

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