

New Jersey Commissioner of Education

Final Decision

H.M., on behalf of minor children, R.M. and H.M.,

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 his minor children, R.M. and H.M., were not entitled to a free public education in Elizabeth schools during the period between May 19, 2023 and September 15, 2023, contending that he and his children resided at an address on Gibbons Street in Elizabeth during this period. The Board contended that the children were domiciled in Linden with their mother. The Board sought tuition reimbursement for the period of R.M. and H.M.'s alleged ineligible attendance in Elizabeth schools.

The ALJ found, *inter alia*, that: petitioner filed his *pro se* residency appeal in September 2023; thereafter, petitioner failed to appear at three scheduled prehearing telephone conferences, two in November 2023 and one in January 2024, despite having received appropriate notice of same; petitioner subsequently failed to appear at an in-person hearing scheduled for February 8, 2024, and has offered no explanation for his failure to appear; nevertheless, the hearing proceeded on an *ex parte* basis to consider the Board's counterclaim for tuition. The ALJ concluded that petitioner has abandoned his appeal. Accordingly, the ALJ ordered the petition dismissed; further, the ALJ granted the Board's counterclaim for tuition and ordered the petitioner to reimburse the Board in the total amount of \$5,981.40 for thirty days of ineligible attendance by R.M. and H.M. during the period in question

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter and dismissed the petition. Petitioner was ordered to reimburse the Board in the total amount of \$5,981.40, and the petition 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.

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R.M. and H.M.,

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's (ALJ) finding that petitioner abandoned his appeal and failed to sustain his burden of establishing that he was domiciled in Elizabeth (District) between May 19, 2023 and September 15, 2023. The Commissioner further concurs with the ALJ's conclusion that petitioner's minor children were therefore not entitled to a free public education in the District during that time.

Pursuant to *N.J.S.A. 18A:38-1b*, the Commissioner shall assess tuition against petitioner for the time period during which the minor children were ineligible to attend school in the District. Therefore, the Board is entitled to tuition reimbursement in the amount of \$5,981.40¹

¹ The tuition reimbursement for R.M. is \$2,988.90. This amount is based on the per diem tuition of \$99.63 listed in the District's Notice of Final Ineligibility (Exhibit R-7) and 30 days of ineligible attendance as shown on the District's

for the period from May 19, 2023 and September 15, 2023, during which time petitioner's minor children were ineligible to attend school in the District.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$5,981.40. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²



ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 15, 2024

Date of Mailing: March 20, 2024

2022-2023 and 2023-2024 calendars (Exhibit R-12). The tuition reimbursement for H.M. is \$2,992.50. This amount is based on the per diem tuition of \$99.75 listed in the District's Notice of Final Ineligibility (Exhibit R-7) and 30 days of ineligible attendance as shown on the District's 2022-2023 and 2023-2024 calendars (Exhibit R-12).

² 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 11382-23

AGENCY DKT. NO. 250-9/23

H.M. ON BEHALF OF MINOR CHILDREN

R.M. and H.M.,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY

OF ELIZABETH, UNION COUNTY,

Respondent.

No appearance by H.M., petitioner, pro se

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

Record Closed: February 8, 2024

Decided: February 14, 2024

BEFORE: **R. TALI EPSTEIN, ALJ**

STATEMENT OF THE CASE

Petitioner H.M. is the father of minor children R.M. and H.M.¹ who were students in the Elizabeth Public School District ("District") until they transferred to the Linden

¹ Petitioner shares the same initials (H.M.) as one of the children on behalf of whom he brings this appeal. For the avoidance of confusion, the child H.M. will be referred to herein by initials and the father as "petitioner."

Public School District on September 18, 2023. From May 19, 2023 until September 15, 2023, when they were disenrolled, R.M. and H.M. were not domiciled in the District. Should public school be free for R.M. and H.M. in the District for this period? No. Public school shall be free only to a minor who is domiciled within the school district. N.J.S.A. 18A:38-1(a).

PROCEDURAL HISTORY

On April 27, 2023, the Elizabeth Board of Education (“Board” or “respondent”) initially determined that R.M. and H.M. were not domiciled within the District, offered to conduct a residency hearing before the Board, and directed petitioner to present residency proofs to its investigator. Petitioner did not seek a residency hearing. (R-6.)

On May 19, 2023, the Board rendered its final decision, advising petitioner that neither child could attend public schools in the District because their domicile was not in the District. (R-7.) The Board further advised petitioner that he had the right to appeal the District’s residency determination within twenty-one days of the May 19, 2023, notice. If he abandoned and/or failed to prosecute his appeal, however, the District could seek per diem tuition reimbursement for the period of the children’s ineligible attendance. (Id.) The notice also informed petitioner that if he did not appeal within twenty-one days, R.M. and H.M. would be removed from the District schools. (Id.)

On September 12, 2023, the Board advised petitioner that H.M. and R.M. would be transferred out of the District on September 15, 2023. (R-8.)

On or about September 15, 2023, petitioner completed and submitted a Pro Se Residency Appeal form. (R-9.) On October 24, 2023, the Board filed its answer and counterclaim for tuition reimbursement.²

² A corrected answer dated November 21, 2023, addressed a typographical error in the “wherefore” clause of the initial pleading.

On October 26, 2023, the Department of Education Office of Controversies and Disputes transmitted the matter under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law (“OAL”), N.J.S.A. 52:14F-1 to -23, for a hearing as a contested case under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

I scheduled an initial telephone prehearing conference for November 21, 2023. The Board’s counsel appeared, but petitioner did not. I rescheduled the initial prehearing conference for November 27, 2023, and again for January 3, 2024, but petitioner failed to appear on both occasions, despite advance notice. On January 3, 2024, I issued a prehearing order to the parties and set the matter for an in-person hearing on January 24, 2024. Due to a scheduling conflict and at respondent’s request, the hearing date was adjourned to February 8, 2024, at 9:30 a.m., and petitioner was notified of same. The parties also received a reminder notification of the hearing on February 7, 2024.

On February 8, 2024, I conducted the hearing. Petitioner failed to appear and did not contact the OAL to explain his absence. After waiting thirty minutes, I opened the record at 10:00 a.m. and proceeded ex parte with the Board’s counterclaim for tuition reimbursement. I closed the record following the Board’s presentation of its proofs.

FINDINGS OF FACT

Having reviewed and considered the uncontested testimony of the Board’s residency investigator, Timothy Kirk (“Kirk”), and based on the documentary evidence presented at the hearing, I **FIND** the following **FACTS** in this matter:

Petitioner did not appear for the hearing, and there is no indication that he did not receive notice of the hearing. Petitioner never called or wrote to the OAL explaining his failures to appear for the prehearing conferences or the hearing. I therefore **FIND** that petitioner has abandoned his appeal.

The Board's residency investigation of R.M. and H.M.'s domicile began in or about April 2023, when it became aware that the younger child, H.M., was routinely picked up late. School staff reported that H.M. waited after school for an older sibling (who previously transferred to and was attending school in Linden) to pick up H.M. and walk together to Linden, where their mother lived. (R-2.) Petitioner admits that R.M. and H.M.'s mother resides in Linden, but he claims that R.M. and H.M. reside with him at 858 Gibbons Court in Elizabeth (the "Elizabeth address"). (Id.)

Kirk, a former police officer and residency investigator for two and one-half years, conducted the residency investigation. Kirk credibly testified regarding the steps he took to investigate the matter. He reviewed the address information provided by R.M. and H.M.'s parents upon their registration and enrollment in the District schools. (R-1.) Kirk also investigated and surveilled the Elizabeth address provided by petitioner and the Linden residence of R.M. and H.M.'s mother. (R-3, R-11.) Kirk further reviewed records of school-issued laptop location information for R.M. and H.M. (R-4, R-5.) and the purported proofs of residence supplied by petitioner.

Kirk's investigation revealed that the Elizabeth address provided by petitioner is a single-family dwelling that was the subject of multiple residency investigations involving several different families and eleven students, including R.M. and H.M. (R-10.) A background search of petitioner shows the family residence at 1826 Essex Avenue, Apt. 1, in Linden, NJ. (R-3.) Similarly, the laptop location information shows that, outside of school locations, the laptops issued to R.M. and H.M. were turned on in the immediate vicinity of the Linden home address. (R-4, R-5.) Over the ten-month period surveyed (while school was in session), there was no record that either of the laptops was turned on at the Elizabeth address. (Id.)

During the course of Kirk's physical surveillance of the Elizabeth address in April and May 2023, he never observed R.M. or H.M. exiting or returning to that location. Kirk did, however, observe both students exiting the Linden address. Kirk photographed R.M. walking from the Linden address on April 24, 2023, a school morning at approximately 7:30 a.m. (R-11.)

The Board sent petitioner notices of initial determination of ineligibility for H.M. and R.M., both dated April 27, 2023 (the “Initial Notices”). (R-6.) The Initial Notices attached a residency verification form directing petitioner to present specific forms of proof. (Id.) Petitioner neither completed the verification form nor did he supply any proof of residency in Elizabeth. Thereafter, the Board sent notices of final eligibility for H.M. and R.M. to petitioner at the Linden address (the “Final Notices”). (R-7.) Among other things, the Final Notices directed petitioner to contact Mr. Kirk with any questions. (Id.) On May 22, 2023, petitioner met with Mr. Kirk. Petitioner provided some documentation but insufficient proof of residency. By letters dated September 12, 2023, the Board advised petitioner that, in light of his failure to provide proof of residency, H.M. and R.M. “will be transferred out of the Elizabeth School District on September 15, 2023.” (R-8.) Petitioner then appealed the Board’s determination and submitted several documents with his pro se residency appeal dated September 15, 2023. (R-9.) Petitioner, however, failed to submit the requisite number of proofs required by the Board. Petitioner also failed to submit a lease or other verifiable forms of proof that would establish residency in Elizabeth. (Id.)

The per diem rate for tuition at the Elizabeth school R.M. attended is \$99.63. (R-7.) The per diem rate at the Elizabeth school H.M. attended is \$99.75. (Id.) May 19, 2023, marked the beginning of the period of ineligible attendance for R.M. and H.M. in the District. Based on the District school calendar, there were twenty-two school days from May 19, 2023, until the end of the 2022-2023 school year. (R-12.) During the 2023-2024 school year, R.M. and H.M.’s period of ineligible attendance ran from the first day of the school year, September 5, 2023, until they were disenrolled on September 15, 2023, amounting to eight school days. (Id.) Applying the per diem rates above, the District seeks tuition reimbursement for R.M. and H.M. for thirty days of ineligible attendance for a total of \$5,981.40.

CONCLUSIONS OF LAW

Public school shall be free to a person over five and under twenty years of age who is domiciled within the school district. N.J.S.A. 18A:38-1(a). A student is domiciled

in a school district if his parent or guardian has a permanent home in the district such that “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); State v. Benny, 20 N.J. 238, 250 (1955). New Jersey has consistently held that the domicile of the child follows the domicile of the parent. Shim v. Rutgers, 191 N.J. 374, 399 (2007). Establishment of a domicile is an act of volition. Matter of Unanue, 255 N.J. Super. 362, 375 (Law Div. 1991). “[A] choice of domicile by a person, irrespective of the motive, will be honored by the court, provided there are sufficient objective indicia, by way of proofs, supporting the actual existence of that domicile.” Id. at 376.

N.J.A.C. 6A:22-6.2 authorizes the Commissioner of Education to assess tuition if a student does not have a right to attend school in the district and/or a residency appeal is abandoned.

Here, petitioner failed to appear for the scheduled hearing, without explanation, and there is no testimony or other evidence challenging the District’s residency determination or counterclaim for tuition reimbursement. I, therefore, **CONCLUDE** that because petitioner abandoned his appeal, it is dismissed. Further, based upon the facts adduced at the hearing, I **CONCLUDE** that a preponderance of the evidence demonstrates that petitioner, H.M. and R.M. are not domiciled in Elizabeth, nor were they domiciled in the District when Elizabeth commenced its investigation. Thus, I **CONCLUDE** that the Board is entitled to prevail as a matter of law on its counterclaim for tuition reimbursement in the amount sought.

ORDER

Given my findings of fact and conclusions of law, it is hereby **ORDERED** that petitioner’s residency appeal is **DISMISSED**. It is further **ORDERED** that respondent’s counterclaim seeking tuition reimbursement is **GRANTED**, and petitioner is **ORDERED** to reimburse respondent the amount of \$5,981.40 for the thirty school days of ineligible

attendance by H.M. and R.M. in the District prior to their disenrollment on September 15, 2023.

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.



February 14, 2024
DATE

R. TALI EPSTEIN, ALJ

Date Received at Agency:

February 14, 2024

Date Mailed to Parties:

February 14, 2024

WITNESSES

For Petitioner

None

For Respondent

Timothy Kirk, Investigator for the Elizabeth Board of Education, Legal Department

EXHIBITS

For Petitioner

None

For Respondent

- R-1 PowerSchool Demographics/Transfer Information for Students H.M. and R.M.
- R-2 Investigator Timothy Kirk's Summary of Residency File (Attachments Omitted)
- R-3 Electronic Background Check for Petitioner
- R-4 Elizabeth Public School's Laptop Location Information for Student H.M.
- R-5 Elizabeth Public School's Laptop Location Information for Student R.M.
- R-6 April 27, 2023, Notices of Initial Determination of Ineligibility
- R-7 May 19, 2023, Notices of Final Ineligibility
- R-8 September 12, 2023, Notices of Transfer on September 15, 2023
- R-9 Petitioner's Pro Se Residency Appeal dated September 15, 2023
- R-10 Legal Department Spreadsheet Regarding 858 Gibbons Ct., Elizabeth
- R-11 Investigator Timothy Kirk's Surveillance Photographs (Linden Address)
- R-12 Elizabeth Public Schools' 2022-2023 and 2023-2024 School Year Calendars