

New Jersey Commissioner of Education

Final Decision

P.P.P., on behalf of minor child, E.E.P.,

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 child, E.E.P., was not entitled to a free public education in Elizabeth schools during the period between May 5, 2023 and June 5, 2023, contending that he and E.E.P. resided at an apartment on Fulton Street in Elizabeth. The Board contended that E.E.P. was domiciled in Hillside, New Jersey during this period. The Board sought tuition reimbursement for the period of E.E.P.'s alleged ineligible attendance in Elizabeth schools.

The ALJ found, *inter alia*, that: E.E.P. was disenrolled from the Elizabeth School District (Elizabeth) in June 2023; P.P.P. failed to appear at a prehearing conference in October 2023; during a second prehearing conference in November 2023, petitioner disconnected from the call prior to conclusion of the conference; petitioner then failed to appear at the hearing in December 2023; the respondent Board has shown by a preponderance of evidence that neither E.E.P.'s mother, R.V., nor his father, P.P.P., reside in Elizabeth; and petitioner failed to provide any evidence to the contrary; and N.J.S.A. 18A38-1(b)(1) provides that when the evidence does not support a claim of residency, the resident shall be assessed tuition for the period of ineligible attendance. The ALJ concluded that petitioner owes the Board tuition reimbursement in the amount of \$1,997.40, representing twenty days of ineligible attendance by E.E.P. in Elizabeth schools.

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 amount of \$1,997.40.

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.

68-24
OAL Dkt. No. EDU 10056-23
Agency Dkt. No. 243-9/23

New Jersey Commissioner of Education
Final Decision

P.P.P., on behalf of minor child, E.E.P.,

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 failed to sustain his burden of establishing that he and his minor child, E.E.P., were domiciled in Elizabeth (the District) between May 5, 2023 and June 5, 2023. The Commissioner further concurs with the ALJ's conclusion that E.E.P. was, 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 petitioners for the time period during which E.E.P. was ineligible to attend school in the District. Therefore,

the Elizabeth Board of Education (Board) is entitled to tuition reimbursement in the amount of \$1,997.40 for the period from May 5, 2023 through June 5, 2023.¹

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 \$1,997.40 for tuition costs incurred from May 5, 2023 through June 5, 2023 when E.E.P. was ineligible to attend school in the District. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024

Date of Mailing: January 25, 2024

¹ This amount is based on the per diem tuition rate of \$99.87 listed in the District's Final Notice of Ineligibility (Exhibit R-4) and the District's 2022-2023 school calendar (Exhibit R-8), which reflects 20 days of school between May 5, 2023 and June 5, 2023.

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 10056-23

AGENCY DKT NO. 243-9/23

P.P.P., ON BEHALF OF MINOR CHILD, E.E.P.,

Petitioner,

v.

BOARD OF EDUCATION OF THE CITY OF

ELIZABETH, UNION COUNTY,

Respondent.

P.P.P., petitioner, pro se

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

Record Closed: December 19, 2023

Decided: December 21, 2023

BEFORE **PATRICE E. HOBBS**, ALJ:

STATEMENT OF THE CASE

Petitioner, P.P.P. challenges the determination by the Board of Education of the City of Elizabeth, Union County (BOE or respondent) that the minor child E.E.P. does not reside in Elizabeth pursuant to N.J.S.A. 18A:38-1 and for reimbursement of tuition for E.E.P. Should public school be free to petitioner and his children in Elizabeth while they lived in Hillside? No. Under N.J.S.A. 18A:38-1(a), public school shall be free to a minor

who is domiciled within the school district, and petitioner and his family meet no exception to this law.

PROCEDURAL HISTORY

In June 2023, E.E.P. was disenrolled from the Elizabeth School District. On September 11, 2023, P.P.P. filed his appeal with the Commissioner of Education. On September 22, 2023, this matter was transmitted from the New Jersey State Department of Education to the Office of Administrative Law (OAL) for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to-13. A prehearing conference was held on October 16, 2023. P.P.P. did not appear. A second prehearing conference was held on November 8, 2023. Prior to conclusion of the prehearing conference, P.P.P. disconnected from the call. P.P.P. did not appear for the hearing. The hearing took place on December 19, 2023. The record closed on December 19, 2023.

FINDINGS OF FACT

Based on the credible testimonial and documentary evidence, I **FIND** the following uncontroverted **FACTS**:

1. R.V. is the mother of E.E.P. and she enrolled E.E.P. at JVJ STEM Academy in Elizabeth, New Jersey. (R-1.)
2. R.V. is also the mother of A.P. (year of birth 2013). A.P. is not enrolled in any Elizabeth Public School.
3. P.P.P. was not listed on the school demographic profile. (R-1.)
4. During the 2022-2023 school year, E.E.P. had 400 absences from his class. (R-2.)
5. As a result of the unusually large number of absences, the BOE requested that R.V. provide the BOE with proof of domiciliary within the district. (R-3.)
6. There was no response from R.V.

7. The BOE engaged Mr. Buteau, an investigator, who went to the Cross Avenue address. Mr. Buteau spoke with the landlord who stated she did not know R.V. or E.E.P.
8. Since the BOE had no proof of residency, the BOE notified R.V. that E.E.P. was ineligible for school within the district. (R-4.)
9. Mr. Buteau spoke with R.V. who confirmed that she resided in Hillside, New Jersey.
10. Mr. Buteau verified that R.V. resides in Hillside, New Jersey through a background check that includes public and private records.
11. R.V. provided no explanation for the numerous absences from school.
12. The BOE formally disenrolled E.E.P. from the school district on June 5, 2023.
13. On September 11, 2023, P.P.P. filed an appeal of the residency determination, and included a certified letter from Mr. Franco, an Anchor Benefit Application, and an Elizabeth Public Library card as proof that P.P.P. resides at Fulton Street in Elizabeth. (R-7.)
14. The certified letter from Mr. Franco states that he rents a Fulton Street apartment to P.P.P.
15. The BOE Residency Verification Form lists multiple documents that would be acceptable as proof of residency and requires a showing of only five documents. P.P.P. not only failed to provide five items for proof of residency as required by the BOE, but also failed to provide any of the items listed on the Residency Verification Form. (R-7.)
16. Mr. Buteau went to the Fulton Street address and spoke with the tenants at that address who had no knowledge of P.P.P. or E.E.P.
17. Mr. Buteau verified that the owner of the Fulton Street address is Ms. Virginia Scott.
18. E.E.P. was ineligible for education at the Elizabeth BOE from May 5, 2023, through June 5, 2023, or twenty school days.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

At issue in this case is whether E.E.P resides within the Elizabeth Board of Education School District. Any child between the ages of five and twenty years old is entitled to free public education in the district in which he is a resident. N.J.S.A. 18A:38-1(a); N.J.A.C. 6A:22-3.1(a). A student is a resident of 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). A student may attend school in a district in which he is a non-resident, with or without payment of tuition, at the discretion of the school district. N.J.S.A. 18A:38-3(a); N.J.A.C. 6A:22-2.2.

Domicile has been defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is that of his or her parent, custodian, or guardian. P.B.K. o/b/o minor child E.Y. v. Board of Ed. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001).

Where a local board determines that a child is not properly domiciled in its district, N.J.S.A. 18A:38-1(b)(2) provides a right of appeal to the parents as follows:

The parent or guardian may contest the Board's decision before the Commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the Commissioner and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this section.

N.J.S.A. 18A:38-1(b)(2). In the case at hand, P.P.P. contested the BOE’s decision that E.E.P. was not properly domiciled in the School District. The BOE has shown by a preponderance of the evidence that neither R.V. nor P.P.P. reside in Elizabeth. P.P.P. did not provide any evidence to the contrary.

Based on the facts above, I **CONCLUDE** that the petitioner and the minor child, E.E.P. were not domiciled in the Elizabeth Board of Education School District in the 2022-2023 school year.

N.J.S.A. 18A:38-1(b)(1) provides that when the evidence does not support the claim of the resident, the resident shall be assessed tuition:

Tuition shall be 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 and shall be collected in the manner in which orders of the commissioner are enforced.

N.J.S.A. 18A:38-1(b)(1). Since the evidence does not support the claims of the petitioner, the BOE is therefore authorized to assess tuition upon the petitioner as required under the law. The BOE has provided the per student daily rate as \$99.87 and the number of days of ineligible attendance for E.E.P. as twenty. The total amount of tuition reimbursement owed to the BOE is \$1997.40. Based on the above facts and legal principles cited above, I **CONCLUDE** that the petitioner owes the respondent the tuition for out-of-district students for the entire 2022-23 school year.

ORDER

Based upon the foregoing, it is **ORDERED** that the petitioner owes the respondent the cost of tuition for out-of-district student, E.E.P. for his attendance at the JVJ Stem Academy in the amount of \$1997.40.

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.

December 21, 2023
DATE



PATRICE E. HOBBS, ALJ

Date Received at Agency:

December 21, 2023

Date Mailed to Parties:
lsr

December 21, 2023

APPENDIX

WITNESSES

For Petitioner:

P.P.P., petitioner

For Respondent:

William Buteau

EXHIBITS

For Petitioner:

None

For Respondent:

- R-1 Elizabeth Board of Education Demographic Information for E.E.P.
- R-2 Elizabeth Board of Education Attendance Records for E.E.P.
- R-3 Notice of Initial Determination of Ineligibility for E.E.P.
- R-4 Notice of Final Ineligibility for E.E.P.
- R-5 Elizabeth Board of Education Transfer Records for E.E.P.
- R-6 Investigation Notices on Pichardo Matter and Documents
- R-7 Documentation received from P.P.P.
- R-8 2022-2023 School Calendar