57 Ed Dept, Decision No. 17212 (NYCOMMED), 2017 WL 4863839

New York State Education Department

Decisions of the Commissioner

Appeal of J.R., on behalf of her son E.R., from action of the Board of Education of the Malverne Union Free School District regarding residency.

Decision No. 17,212
Decided: October 10, 2017

***1** Frazer & Feldman Esq., LLP, attorneys for respondent, **Christie** R. **Jacobson**, of counsel

ELIA, Commissioner

Petitioner appeals the determination of the Board of Education of the XXXXXXXX Union Free School District ("respondent") that her son, E.R. ("the student"), is not a resident of the district. The appeal must be dismissed.

The student has attended the district's schools since 2011. The petition states that the student intends to reside in the district at petitioner's address ("the XXXXXXXX address") "for more than 15 years." In or about August 2013, an anonymous resident reported that petitioner and her son were not residents of the district and were not residing at the XXXXXXXX address. The anonymous resident reported that the XXXXXXXX address appeared to be vacant and that no activity or people were observed there, nor was garbage left at the curb or vehicles observed. A residency investigation was then commenced by the district.

Surveillance was conducted on 11 school days and one school night from September 9 through September 26. Surveillance was conducted at both the XXXXXXXX address and an address in XXXXXX ("XXXXXX address") where petitioner's boyfriend resides. In a written report, the investigator stated that he had driven by the XXXXXXXX address "at various hours" and had seen no activities or cars there. However, throughout the surveillance period, the investigator observed petitioner's vehicle at the XXXXXX address and observed petitioner and the student leave the XXXXXX address and drive to school in the district on each surveillance morning.

By letter dated September 26, 2013, the registrar advised petitioner that the district had become aware that she did not reside at the XXXXXXXX address and instead resided outside of the district. The letter gave petitioner the opportunity to present evidence to dispute the allegation by contacting the assistant superintendent for district operations ("assistant superintendent") to set up a meeting. The letter stated that, if petitioner did not contact the district, the student would be excluded from school on October 4, 2013.

A residency meeting was held at which petitioner claimed that she had relocated to the XXXXXX address after she had obtained a temporary order of protection against her ex-husband (the student's father). At the meeting, petitioner also claimed that she sometimes lived at a third address outside of the district in XXXX XXXXXX ("XXXX XXXXXX address"). During the meeting, the assistant superintendent informed petitioner that a surveillance investigation had been conducted and showed that the student and petitioner consistently resided at the XXXXXX address. In response, petitioner claimed that she lived at the XXXXXXXX address, but did not provide any additional evidence to support her claim. At the conclusion of the meeting, the assistant superintendent and district registrar informed petitioner of their determination that she and the student were not residents of the district and that the student would be excluded from school effective the next day. Petitioner's appeal rights were also explained.

***2** Petitioner appealed the district's determination to respondent, which considered petitioner's appeal and upheld the residency determination. This appeal ensued. Petitioner's request for interim relief was denied.

In her appeal, petitioner contends the she and her son reside at the XXXXXXXX address. She argues that the student has resided at the XXXXXXXX address since birth and intends to reside there "for 15 more years." Petitioner submits a statement from her boyfriend stating that he has known petitioner for two years, that they are in a relationship, and that she and her son "spend time" at his residence in XXXXXX, but reside at the XXXXXXXX address. Petitioner also alleges in an unsworn statement attached to the petition that she has lived at the XXXXXXXX address since 2006, and explains that she spent time at her boyfriend's house in XXXXXX from September 2013 through October 2013 while recovering from surgery.

Respondent asserts that the petition fails to set forth any evidence to rebut the district's surveillance or show that petitioner actually resides at the XXXXXXXX address. Respondent argues that, despite her claims that her absence from the XXXXXXXX address is temporary, petitioner has not shown that she ever expects to return to that address. Respondent asserts that its residency determination is supported by the record and the appeal must be dismissed as moot.

The Commissioner will only decide matters in actual controversy and will not render a decision on a state of facts which no longer exist or which subsequent events have laid to rest (Appeal of a Student with a Disability, 48 Ed Dept Rep 532, Decision No. 15,940; Appeal of M.M., 48 id. 527, Decision No. 15,937; Appeal of Embro, 48 id. 204, Decision No. 15,836). In response to a request by my Office of Counsel, respondent submitted an affirmation indicating that the student was re-enrolled in the school district in the 2014-2015 school year and continues to attend school there. Therefore, the appeal is academic. To the extent that the parties, nevertheless, seek a determination on the merits, it is well established that the Commissioner does not issue advisory opinions or declaratory rulings in an appeal pursuant to Education Law §310 (Appeal of a Student with a Disability, 48 Ed Dept Rep 411, Decision No. 15,899; Appeal of Waechter, 48 id. 261, Decision No. 15,853).

THE APPEAL IS DISMISSED.

End of Document