

57 Ed Dept, Decision No. 17299 (NYCOMMED), 2018 WL 366938

New York State Education Department

Decisions of the Commissioner

Appeal of Q.H., on behalf of her daughter Y. (I.) L., from action of the Board of Education of the Manhasset Union Free School District regarding residency.

Decision No. 17,299

Decided: January 2, 2018

*1 Xie & Associates, PLLC, attorneys for petitioner, Xiang Xie, Esq., of counsel

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

ELIA, Commissioner

Petitioner appeals the determination of the Board of Education of the Manhasset Union Free School District (“respondent”) that her daughter, Y. (I.) L. (“the student”) is not a district resident. The appeal must be dismissed.

On or about January 6, 2014, the student was enrolled in respondent's high school based on petitioner's representation that she and the student resided within the district. Subsequently, in March 2015 during a visit to the school guidance counselor, the student indicated that both her parents resided in China and that she was under the care of another individual at an in-district address.

By letter dated May 20, 2015, respondent's deputy superintendent for business and finance (“deputy superintendent”) notified petitioner of her determination that petitioner did not reside within respondent's district and, thus, the student was ineligible to attend respondent's school tuition-free. The deputy superintendent provided petitioner with an opportunity to substantiate her residency within the district.

By letter dated May 28, 2015, petitioner's attorney submitted documents regarding petitioner's residency in the district.

By letter dated June 4, 2015, the deputy superintendent informed petitioner of respondent's determination that the evidence she had submitted did not demonstrate her physical presence within the district and, therefore, her daughter was not eligible to attend the district's schools on a tuition-free basis.

By letter dated June 11, 2015, petitioner appealed to the superintendent and submitted additional documents and an affidavit to substantiate her residency within the district.

By letter dated June 24, 2015, the superintendent notified petitioner of his final determination that the student was not entitled to attend the district's schools on a tuition-free basis. The letter further advised petitioner that she would be sent a tuition bill for the cost of providing educational services to the student for the period of her nonresidency. This appeal ensued. Petitioner's request for interim relief was denied on August 4, 2015.

Petitioner contends that she owns a home in the district and resides there with her family and that, consequently, the student is entitled to attend respondent's schools.

Respondent maintains that the petition fails to state a claim upon which relief may be granted and that petitioner has failed to meet her burden of proof. Respondent also maintains that its determination was not arbitrary and capricious.

*2 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). Following submission of the pleadings in this appeal, my Office of Counsel requested information regarding the enrollment status of the student pursuant to section 276.5 of the Commissioner's regulations. By affirmation dated December 14, 2015, respondent's counsel submitted information that, based on new evidence establishing petitioner's residency, the student had been admitted to respondent's schools for the 2015-2016 school year. Given respondent's subsequent admission of the student as a resident, the appeal is moot.

To the extent that respondent seeks a determination that the student was not a district resident during any part of the 2014-2015 school year so as to seek tuition reimbursement in another forum, any such determination would be advisory in nature (see e.g. Appeal of Morris, 57 Ed Dept Rep, Decision No. 17,175; Appeal of Strassburg, 56 *id.*, Decision No. 16,931; Appeal of L.B. and T.B., 55 *id.*, Decision No. 16,832. 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). Citing Appeal of Walker (32 Ed Dept Rep 396, Decision No. 12,865), respondent argues that its subsequent action with respect to petitioner's residency for the 2015-2016 school year does not render this appeal moot. However, I note that since the decision in Appeal of Walker was issued in 1992, subsequent decisions have consistently found residency appeals moot under such circumstances and the Commissioner has not issued advisory opinions or declaratory rulings with respect thereto (see e.g. Appeal of Morris, 57 Ed Dept Rep, Decision No. 17,175; Appeal of Strassburg, 56 *id.*, Decision No. 16,931; Appeal of O.S. and D.S., 50 *id.*, Decision No. 16,201; see generally Appeal of Pierrelus, 37 *id.* 184, Decision No. 13,836; Application to Reopen the Appeal of Pierrelus, 37 *id.* 502, Decision No. 13,913). To the extent that the decision in Appeal of Walker is inconsistent with such subsequent decisions, it is hereby overruled.

Therefore, as there is no further relief that may be granted, the appeal is dismissed as moot.

In light of this disposition, I need not consider the parties' remaining contentions.

THE APPEAL IS DISMISSED.