

**New Jersey Commissioner of Education**  
**Final Decision**

J.S., on behalf of minor child, S.S.,

Petitioner,

v.

Board of Education of the City of Elizabeth,  
Union County,

Respondent.

**Synopsis**

Petitioner filed a pro se petition challenging the determination of the respondent Board that his child, S.S., was ineligible to receive a free public education in respondent's school district during a portion of the 2017-2018 school year. Petitioner asserted that he was domiciled in Elizabeth for 15 years but was forced to relocate to Roselle as of January 17, 2018 due to his employment situation. Petitioner returned to Elizabeth in mid-May 2018. The Board contended that petitioner and his child relocated from their Elizabeth home on or about January 3, 2018 through the end of the school year on June 25, 2018. The Board filed a counterclaim for tuition for this period of time.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a) and *N.J.A.C.* 6A:22-3.1(a), public schools are free to any person over five and under twenty five years of age who is domiciled within the school district; in this case, petitioner relocated from Elizabeth for financial reasons and began residing in Roselle as of January 17, 2018, but returned to Elizabeth as of May 20, 2018; as petitioner was not domiciled in Elizabeth during this time period, S.S. was not entitled to attend school in the district, and tuition is owed for the period of ineligible attendance. The ALJ concluded, however, that the petitioner could only be assessed tuition for the period after the date of the Board's final notice of ineligibility, which in this case was after February 21, 2018. Accordingly, the ALJ ordered petitioner to pay tuition for a modified period of ineligibility, from February 22, 2018 to May 20, 2018, in the amount of \$4,477.20, representing 56 school days at a daily tuition rate of \$79.95.

Upon review, the Commissioner concurred with the ALJ that petitioner failed to sustain his burden of establishing that he was domiciled in Elizabeth from January 17, 2018 to May 20, 2018. However, the Commissioner determined that, pursuant to *N.J.A.C.* 6A:22-6.2, the Board is entitled to tuition reimbursement for the full period of time that S.S. was ineligible to attend Elizabeth schools. Accordingly, petitioner was directed to reimburse the Board in the amount of \$6,236.10 for tuition costs for the time period from January 17 through May 20, 2018. The Initial Decision of the OAL, as modified herein, was adopted as the final decision in this matter. 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.

November 18, 2019

**New Jersey Commissioner of Education**

**Final Decision**

J.S., on behalf of minor child, S.S.,

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.<sup>1</sup> The parties did not file exceptions.

In this matter, petitioner is challenging the Board's determination that he did not reside in Elizabeth from January 3, 2018 to the end of the 2017-18 school year, and that the minor child was therefore ineligible to attend school in the district during that time. The Administrative Law Judge (ALJ) found that petitioner left Elizabeth and began residing in Roselle as of January 17, 2018, but returned to Elizabeth as of May 20, 2018. However, the ALJ found that petitioner should not be assessed tuition until after February 21, 2019, the date on which the Board's Notice of Final Ineligibility was sent. Accordingly, the ALJ ordered tuition reimbursement in the amount of \$4,477.20, representing 56 school days from February 22, 2018 to May 20, 2018, at a daily tuition rate of \$79.95.

---

<sup>1</sup> The Commissioner was not provided with a transcript of the June 14, 2019 hearing at the OAL.

Upon review, the Commissioner agrees with the ALJ that petitioner failed to sustain his burden of establishing that he was a domiciliary of Elizabeth from January 17, 2018 to May 20, 2018, and that the minor child was, therefore, not entitled to a free public education in the District's schools 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 child was ineligible to attend school in Elizabeth. However, the Commissioner notes that pursuant to *N.J.A.C.* 6A:22-6.2, the Commissioner may only assess tuition for "up to one year of a student's ineligible attendance in a school district prior to the appeal's filing and including the 21-day period to file an appeal." Therefore, as the ALJ found that petitioner was no longer a domiciliary of Elizabeth as of January 17, 2018, the Commissioner finds no reason to limit the Board's assessment of tuition to the date following the Notice of Final Ineligibility. The Board is entitled to tuition reimbursement in the amount of \$6,236.10 (\$79.95 per day for 78 days) for the time period from January 17, 2018 to May 20, 2018, during which time petitioner's minor child was ineligible to attend school in Elizabeth.

Accordingly, the Initial Decision of the OAL is adopted – as modified herein – as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$6,236.10 for tuition costs incurred during the period in which S.S. was ineligible to attend school in Elizabeth. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: November 18, 2019  
Date of Mailing: November 19, 2019

---

<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT NO. EDU 04500-18

AGENCY REF. NO. 60-3/18

**J.S. o/b/o MINOR CHILD, S.S.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE CITY  
OF ELIZABETH, UNION COUNTY,**

Respondents.

---

**J.S.** on behalf of minor child S.S., petitioner pro se

**Christina M. DiPalo**, Esq., for respondent (Lacorte, Bundy, Varady & Kinsella,  
attorneys)

Record Closed: July 15, 2019

Decided: October 7, 2019

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner J.S., on behalf of minor child S.S., (petitioner or J.S.) appeals the residency determination and tuition due associated with it, of the respondent, Board of Education of the Township of Elizabeth, Union County (respondent or BOE).

Petitioner filed a pro se residency appeal with the Department of Education, Bureau of Controversies and Disputes, which transmitted this matter to the Office of Administrative Law (OAL), where it was filed on March 29, 2018 as a contested case, pursuant to N.J.A.C. 6A:3-1 et seq. and N.J.S.A. 52:14B-1 to -15. A hearing was held on June 14, 2019, and the record left open for post hearing submissions until July 15, 2019 when the record closed. An order of extension was entered to extend the time for filing the initial decision in this matter.

### **FACTUAL DISCUSSION AND FINDINGS**

The BOE charged that at some point in the 2017-2018 school year, but no later than January 3, 2018, petitioner, J.S., S.S. a minor child, and their family changed their residency from the City of Elizabeth to Roselle. The BOE submitted essentially uncontested proofs that at some point in the 2017-2018 school year, J.S. and his family, including his child, S.S., moved out of their home in Elizabeth and relocated to a home in Roselle owned by S.S.'s mother, C.M. The school seeks the assessment for tuition for S.S.'s enrollment in Elizabeth schools from the date January 3, 2018 when a Notice of Initial Determination of Eligibility (R-2) was mailed to them until the end of the school year, June 25, 2018.

Investigator David Salnier testified that in December 2017 and January 2018, he conducted surveillance of a house in Roselle which mortgage and deed data listed it as being owned by C.M., the mother of S.S. He also checked voting information and found that C.M and J.S. were registered voters in Roselle. On two occasions he saw J.S., once with S.S., entering said residence in Roselle. On the second occasion, he confronted J.S., who admitted that while he owned a house in Elizabeth, he and his family live in Roselle. (R-1).

On or about January 3, 2018, the BOE notified J.S. of their initial determination that S.S. was ineligible for a free public education from Elizabeth schools as it determined S.S. did not reside in the district. The Initial notice advised J.S. of his right to appeal this determination to the District Board. J.S. appealed and on February 6, a

contested residency determination took place at the BOE (R-3). On February 21, 2018, the BOE issued a Notice of Final Ineligibility. (R-4) This Notice advised J.S. of his right to file an appeal within 21 days to the Commissioner of Education. The Notice stated in pertinent part.

[I]f no appeal is filed by the 21<sup>st</sup> day following the date of this notice [S.S.] will be removed from school, you will be asked to indicate where he will be educated...and we may assess your tuition at the rate of \$64.55 for each day [S.S.] attended school during this period...

[I]f you appeal to the Commissioner but abandon your appeal through withdrawal, failure to prosecute, or any means other than settlement with the district and/or [S.S.] is found not to be entitled to free education in the district you may be assessed for any period of [S.S.] ineligible attendance, including the initial 21 day filing period and the period during which the appeal was pending before the Commissioner.

J.S. testified that he lived in and owned a home where he and S.S. resided in Elizabeth for 15 years. Owing to his "employment situation," sometime during the 2017-2018 school year, he had to "let this property go" to relocate to a house in Roselle, which was owned by C.M., who is S.S.'s mother. (R-7) He also testified that owing to his family's continued financial problems, he and C.M. then lost the Roselle home in a distress sale, after which, and still during the same school year, they moved in with R.R. who owns a home in Elizabeth, in the same school district as the former J.S. home. R.R. testified that he is a close family friend and cousin to the J.S. family. He stated that, while he was not certain of the exact date, soon after the distress sale of C.M.'s home in Roselle, the J.S. family moved in with him. The distress sale had taken place in the "first or second week of May," during which time they relocated all the home furnishings to C.M.'s home. The family, including S.S., resided in Elizabeth with R.R. until J.S. found new employment and finally relocated he and his family to Florida in the summer of 2018. There was no evidence presented to refute any part of J.S.'s or R.R.'s testimony.

Considering the documentary and testimonial evidence presented in this matter, I **FIND** the following **FACTS**:

1. At some point during the 2017-2018 school year, J.S. and S.S. were forced to leave their residence in Elizabeth and relocate to a residence in Roselle, which was owned by S.S.'s mother.
2. Since J.S. admitted that at least as of January 17, 2018, he and S.S. were living in Roselle, and by that time J.S. was a registered voter in Roselle, the family relocated to Roselle at least by that date.
3. During the same school year, the J.S. family lost the house in Roselle and relocated back to Elizabeth in mid-May 2018.
4. In the Summer of 2018, J.S and his family became permanently domiciled in Florida.

### **LEGAL ANALYSIS AND CONCLUSION**

N.J.S.A. 18A:38-1(a) and N.J.A.C. 6A:22-3.1(a) sets forth the right of a student to a free public education, which in pertinent parts states:

Public schools shall be free to the following persons over five and under twenty years of age:

- a. Any person who is domiciled within the school district[.]

See V.R. ex rel A.R. v. Hamburg Bd. of Educ., 2 N.J.A.R. 283, 287 (1980), aff'd, State Bd., 1981 S.L.D. 1533, rev'd on other grounds sub nom.; Rabinowitz v. N.J. State Bd. of Educ., 550 F. Supp. 481 (D.N.J. 1982) (New Jersey requires local domicile, as opposed to mere residence, in order for a student to receive a free education).

The domicile of an unemancipated child is that of his parent, custodian or guardian. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000), aff'd, 167 N.J. 55 (2001); 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).

A student may attend school in a district in which he is not domiciled, 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. A superintendent or administrative principal may also have a non-domiciled student removed from that school, on application to the board of education. N.J.S.A. 18A:38-1(b)(2).

When, as here, 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 for 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.

A student's "domicile" is where the student's parent or guardian has a permanent home in the school 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); In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991), aff'd, 311 N.J. Super. 589 (App. Div.), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051, 119 S. Ct. 1357, 143 L. Ed. 2d 518 (1999).

When a person arguably has more than one residence, there are factors to consider in determining his or her domicile: the physical characteristics of each place; the time spent and the things done in each place; the other persons found there; the person's mental attitude towards each place; and whether or not there was an intention, when absent, to return to that address. Mercadante v. City of Paterson, 111 N.J. Super.



35, 39–40 (Ch. Div. 1970), aff'd, 58 N.J. 112 (1971). “[A] choice of domicile by a person, irrespective of his motive, will be honored by the court, provided there are sufficient objective indicia, by way of proofs, supporting the actual existence of that domicile.” In re Unanue, supra.

Consideration in proving residency for purposes of establishing eligibility for school district placement is found at N.J.A.C. 6A:22-3.4, stating,

(a) A district board of education shall accept a combination of any of the following or similar forms of documentation from persons attempting to demonstrate a student’s eligibility for enrollment in the school district:

1. Property tax bills, deeds, contracts of sale, leases, mortgages, signed letters from landlords and other evidence of property ownership, tenancy or residency;

2. Voter registrations, licenses, permits, financial account information, utility bills, delivery receipts, and other evidence of personal attachment to a particular location;

...

3. Court orders; State agency agreements; and other evidence of court or agency placements or directives;

4. Receipts; bills; cancelled checks; insurance claims or payments; and other evidence of expenditures demonstrating personal attachment to a particular location or to support the student;

...

6. Affidavits, certifications and sworn attestations pertaining to statutory criteria for school attendance, from the parent, guardian, person keeping an “affidavit student,” adult student, person(s) with whom a family is living, or others as appropriate;

...

8. Any other business record or document issued by a governmental entity.

(b) A district board of education may accept forms of documentation not listed in (a) above and shall not exclude from consideration any documentation or information presented by a person seeking to enroll a student.

(c) A district board of education shall consider the totality of information and documentation offered by an applicant and shall not deny enrollment based on failure to provide a particular form of documentation, or a particular subset of documents, without regard to other evidence presented.

(Emphasis supplied)

N.J.A.C. 6A:22-6.3(b) provides that,

Nothing in this chapter shall preclude an equitable determination by the district board of education or the Commissioner that tuition shall not be assessed for all or part of any period of a student's ineligible attendance in the school district when the particular circumstances of a matter so warrant. In making the determination, the district board of education or Commissioner shall consider whether the ineligible attendance was due to a school district's error.

The BOE's Notice of Final Ineligibility states that the BOE may assess tuition after the Notice is sent, and that even if an appeal is filed, it may assess for "this period" i.e. "following the date of this notice..." in this case being, after February 21, 2018, "including the 21 day filing period" and during the pendency of the appeal to the Commissioner. Accordingly, any tuition reimbursement commences after the date of the Notice of Final Ineligibility, i.e. after February 21, 2018. There remains the question of how much of the remaining part of the 2017-2018, the family remained in Roselle, and therefore remained ineligible for free public education in Elizabeth.

Uncontroverted evidence showed that, owing to S.S.'s family's continued financial problems, after they relocated from their home in Elizabeth to C.M.'s house in Roselle, they had to leave the Roselle home owing to a distress sale and returned back

to Elizabeth. The Roselle sale took place in the “first or second week of May 2018” according to both J.S. and R.R. Thereafter, the J.S. family moved back to Elizabeth with R.R., a family friend and cousin, and remained there from mid-May until the family finally relocated to Florida in the summer of 2018. Although difficult to pinpoint the exact day that S.S. and his family began living with R.R., it is safe to conclude that they were completely moved in to R.R.’s house in Elizabeth within a week after the short sale in Roselle.

The Board claims, however, that there was “no proof submitted to the District or the Court regarding proof of residency with respect to the required forms, pursuant to N.J.A.C. 6A:22-3.4(a).” (Post hearing brief, page 2). However, N.J.A.C. 6A:22-3.4 (c) provides that “the district board of education shall consider the totality of information and documentation offered by an applicant and shall not deny enrollment based on failure to provide a particular form of documentation, or a particular subset of documents, without regard to other evidence presented.” (emphasis supplied). Here it would be arbitrary and capricious and contrary to the plain intent of N.J.A.C. 6A:22-3.4 (a) to simply ignore the credible “other evidence” of the J.S. family’s relocation to R.R.’s Elizabeth home as provided by uncontroverted and credible testimony, simply because of the absence of correct “forms.” Moreover, it was established that S.S. and the family resided with R.R., not because J.S. wanted S.S. to attend school there but because they were under continued financial distress which caused them all within one year to leave their home of longstanding in Elizabeth, to temporarily relocate to Roselle to a home J.S.’s wife owned, then to relocate back to Elizabeth to R.R.’s house after being forced out of Roselle by having to accept a short sale, and to eventually take up new permanent residency in Florida.

N.J.A.C. 6A:22-6.3(b) provides that, nothing precludes “an equitable determination by the district board of education or the Commissioner that tuition shall not be assessed for all or part of any period of a student’s ineligible attendance in the school district when the particular circumstances of a matter so warrant.” J.S.’s move to Roselle was precipitated by the financial loss of the family residence of 15 years in Elizabeth. J.S.’s and S.S.’s residency in Roselle, even if it established a domicile was not precisely settled, as they soon lost the

Roselle house as well. Based on their precarious financial circumstances of S.S. and the loss of one home in Elizabeth, and then, after relocating to Roselle, losing that home, J.S. and S.S. were living an almost nomadic like existence until J.S. found new employment and they became domiciled finally in Florida. It is surely equitable that given this family's "particular circumstances" that year, that tuition should not be assessed from the time J.S. and S.S. relocated back to Elizabeth in R.R.'s house from mid-May to the end of the school year.

I do however, agree with the Board that their administrative error in the Final Notice of Ineligibility which stated that J.S. would be assessed tuition for S.S. at the rate of \$64.55 (the kindergarten student's rate) per school day, rather than the first to fifth grader rate of \$79.95 per school day does not warrant the assessment of the tuition during the period of ineligibility at the lower rate. The notice itself referred to the amount tuition that could be assessed being an "estimated" amount. Further, although N.J.A.C. 6A:22-6.3(b) provides that, a "district board of education or Commissioner shall consider whether the ineligible attendance was due to a school district's error," it would be inequitable for the petitioner to receive such a windfall for a mere technical error.

Accordingly, I **CONCLUDE** that the period of ineligibility for which J.S. may be assessed tuition for S.S. while S.S. resided in Roselle rather than in Elizabeth while S.S. attended school in Elizabeth was February 22, 2018, the day after the Notice of Final Ineligibility was sent to J.S., to May 20, 2018, when J.S. and S.S. had relocated back to Elizabeth. The school calendar (R-5) shows there were 56 school days during that time. At the rate of \$79.95 a day, the BOE is entitled to an assessment of \$4477.20 for tuition reimbursement during the aforesaid period.

### **ORDER**

Based upon the foregoing it is **ORDERED** that the respondent's decision is **MODIFIED**, and that the petitioner pay respondent tuition in the amount of \$4,477.20

I hereby **FILE** my 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 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, 4<sup>th</sup> Floor, PO Box 500, Trenton, New Jersey 08625-500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 7, 2019



\_\_\_\_\_  
DATE

\_\_\_\_\_  
**ERNEST M. BONGIOVANNI**

Date Received at Agency:

10/7/19

Date Mailed to Parties:

\_\_\_\_\_

id

**APPENDIX**

**LIST OF WITNESSES**

For Petitioners

J.S.

R.R.

For Respondent

David Saulnier, Investigator, District's legal Department.

**LIST OF EXHIBITS IN EVIDENCE**

For Petitioners:

None

For Respondent

- R-1 Investigation Report, dated January 15, 2018
- R-2 Notice of Initial Determination of Ineligibility, dated January 3, 2018
- R-3 Result of Hearing at District, dated February 5, 2018
- R-4 Notice of Final Ineligibility, dated February 21, 2018
- R-5 Budget Worksheet -Tuition rates for out of district students, 2017/2018
- R-6 Elizabeth Public Schools Calendar four 2017-2018
- R-7 Pro Se Residency Appeal, dated March 12, 2018