

New Jersey Commissioner of Education

Final Decision

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

Petitioner,

v.

Board of Education of the Township of Springfield,
Union County,

Respondent.

Synopsis

Pro se petitioner challenged the action of the respondent Board removing her daughter, A.J., from the Springfield Public School District (Board or District). The District contended that A.J. became ineligible for a free education in Springfield beginning May 1, 2023 through the end of the 2023-2024 school year, subsequent to the family's relocation to an address in Plainfield. Petitioner asserted that her last permanent residence was an apartment in Springfield and that she had intended to live with her husband in a multi-unit Plainfield house that they had purchased, but never did because she discovered her husband had been unfaithful. In the aftermath of the marital breakup, petitioner claimed she was living house to house without a permanent residence and was therefore homeless. The Board sought tuition reimbursement for the period of A.J.'s alleged ineligible attendance in the Springfield school.

The ALJ found, *inter alia*, that: the petitioner bears the burden of proof that A.J. is eligible for a free education in Springfield; although petitioner argues that she is homeless, more than a year passed prior to the District's residency investigation and petitioner never notified the District that A.J. was "homeless"; per *N.J.A.C. 6A:17-2.2(a)(3)*, a child is homeless if she resides in the residency of relatives or friends "out of necessity because the child's family lacks a regular or permanent residence of its own", which is not the case in this matter as A.J.'s family did not and does not lack a residence; A.J.'s eligibility to attend school in Springfield is attached to petitioner's domicile. The ALJ concluded that petitioner failed to sustain her burden of establishing that she and her minor child, A.J., were domiciled in Springfield for the remainder of the 2022-2023 school year, and for the 2023-2024 school year. Accordingly, the ALJ further concluded that petitioner owes the Board tuition reimbursement in the amount of \$17,594.64 for the period of A.J.'s ineligible attendance in the District.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter with modification to the total amount of tuition owed to the Board. Petitioner was ordered to reimburse the Board in the amount of \$17,422.08, which reflects the correct number of days A.J. attended school in the District during the period of her ineligibility. Accordingly, the petition of appeal was dismissed.

<p>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.</p>

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Petitioner,

v.

Board of Education of the Township of
Springfield, 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 her burden of establishing that she and her minor child, A.J.,¹ were domiciled in Springfield (the District) for the portion of the 2022-2023 school year beginning on May 1, 2023, and for the 2023-2024 school year. The Commissioner further concurs with the ALJ that A.J. was not homeless during this period, for the reasons outlined in the Initial Decision. Accordingly, the Commissioner agrees that A.J. was not eligible to receive a free education in the District during that time.

¹ Because petitioner and her child share the same initials, petitioner will be referred to herein as "petitioner," and her child will be referred to herein as "A.J."

Pursuant to *N.J.S.A. 18A:38-1(b)*, the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in the District. Upon review, the Commissioner agrees with the ALJ that the Board is entitled to tuition reimbursement for the 2022-2023 school year commencing on May 1, 2023, and for the 2023-2024 school year. However, the Commissioner finds that the tuition calculation for that period is \$17,422.08. The Attendance Detail for A.J. for 2022-2023 shows 31 days of ineligible attendance (\$83.79 per day for 31 days, totaling \$2,597.49). The Attendance Detail for A.J. for 2023-2024 shows 167 days of ineligible attendance (\$88.77 per day 167 days, totaling \$14,824.59).

Accordingly, the Initial Decision is adopted as modified with respect to the final tuition calculation. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 4, 2024
Date of Mailing: October 7, 2024

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 06840-24

AGENCY DKT. NO. 106-4/24

A.J. ON BEHALF OF MINOR CHILD, A.J.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF SPRINGFIELD, UNION COUNTY,**

Respondent.

A.J., petitioner, pro se

Athina Lekas Cornell, Esq., for respondent (Methfessel & Werbel, P.C.,
attorneys)

Record Closed: August 14, 2024

Decided: August 23, 2024

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

Petitioner A.J. (Mom) challenges the action of the Board of Education of the Township of Springfield (Board) removing her daughter, A.J., from the Springfield Public Schools District (Springfield District). A.J. was not eligible for a free education in Springfield District because she was neither domiciled in nor homeless from Springfield.

PROCEDURAL HISTORY

By notice of initial determination of ineligibility, dated February 12, 2024, Springfield District notified Mom and A.J. (Dad) that it had come to the Board's attention that A.J. was not domiciled in Springfield, New Jersey and no longer entitled to a free education within the Springfield District. (R-1B.) By letter dated March 8, 2024, Springfield District notified Mom and Dad that after the Board conducted a hearing, it appeared that A.J. is domiciled in Plainfield, New Jersey, and that the Board would take a formal vote seeking the removal of A.J. from Springfield District at its March 18, 2024, meeting. (R-1G.) By letter dated March 28, 2024, the Board's attorney notified Mom and Dad that the Board found that A.J. was not domiciled in Springfield and should be immediately withdrawn and that Mom and Dad owed tuition in the amount of \$14,201.70 for the period of May 2023–March 2024. (R-1H.)

On April 18, 2024, Mom filed a Pro Se Petition of Appeal, dated April 17, 2024, with the Department of Education.¹ On May 7, 2024, the Board filed a motion to dismiss in lieu of answer.² On May 10, 2024, the Department transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. Jurisdiction is conferred under N.J.S.A. 18A:6-9.

¹ Dad did not file an appeal.

² Due to applicable case law and the proximity of the dates, it was determined during the prehearing conference that the matter would proceed to a hearing rather than proceed on the motion to dismiss.

The hearing was held on July 10, 2024. The Board submitted its post-hearing brief and certification on July 19, 2024; petitioner submitted her post-hearing letter and documents on July 26, 2024; and the Board submitted a supplemental certification on August 14, 2024, on which date the record closed.

FACTUAL DISCUSSION AND FINDINGS

Mom testified on behalf of petitioner. Rachel Goldberg (Superintendent), Michelle Calas (School Business Administrator/Board Secretary) and James Post (Investigator) testified on behalf of the respondent.

Preliminary Facts

After due consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following preliminary facts:

Mom and Dad have a daughter, A.J., born in July 2019. Per a lease dated October 9, 2021, Mom and Dad leased an apartment at 46 First Street,³ Springfield, New Jersey, for a term of one year, from November 1, 2021, through October 31, 2022 (Springfield Lease). (P-7.)

On April 8, 2022, Mom purchased 766 Second Street,⁴ Plainfield, New Jersey. A mortgage, dated April 8, 2022, reflects that borrower “[Mom], Unmarried” owes the lender \$588,318, plus interest, for 766 Second Street, Plainfield. (R-1D.) Apartment leases for 766 Second Street, Plainfield, all reflect Mom as landlord and further reflect that Unit 1 was rented from December 1, 2022, through November 30, 2023, for \$2,700 per month, that Unit 2 was rented from December 1, 2022, through November 30, 2023, for \$1,800 per month, and that Unit 3 was rented from January 1, 2023, through

³ A fictitious address is used for privacy.

⁴ A fictitious address is used for privacy.

December 31, 2023, for \$1,400 per month. (P-3; P-4; P-5.) Total rent is \$5,900 per month.

An addendum to the Springfield Lease, dated September 23, 2022 (Springfield Lease Addendum), reflects that the landlord agreed to extend the term of occupancy for “6 months” from October 1, 2022,⁵ through April 30, 2023. (P-8.)

On November 15, 2022, Dad and M.P., as tenants in common, purchased 667 Third Street, Plainfield, New Jersey⁶ from a limited liability company. (R-1D.)

For the 2022–2023 and 2023–2024 school years, A.J. attended a full-day preschool program at the Edward V. Walton School in Springfield. (R-2.) A Student Information Sheet completed by Mom reflects A.J.’s address as 12 Fourth Street, Plainfield, New Jersey.⁷ (R-1C.) 12 Fourth Street, Plainfield, was the address of Mom’s mother and stepfather. Mom’s mother passed away in March 2023. An expired driver’s license for Mom reflects an issue date of March 2019, an expiration date of April 2023, and an address of 12 Fourth Street, Plainfield. A current driver’s license for Mom reflects an issue date of March 2023, an expiration date of April 2027, and an address of 12 Fourth Street, Plainfield.

Mom and Dad were married in January 2023. (R-4.)

A deed dated July 11, 2023, reflects that the grantors, “[Dad], whose address is 667 Third Street, Plainfield, New Jersey 07060 and [M.P.], whose address is . . . Newark, New Jersey” conveyed ownership of 667 Third Street, Plainfield, to “[Dad] and [Mom], married to each other, whose address is [667 Third Street], Plainfield, New Jersey 07060,” for consideration of \$1. (R-1E.) The “record and return to” address on the July 11, 2023, deed is as follows: [Dad], 667 Third Street, Plainfield, New Jersey 07060. (R-1D.) A mortgage, dated July 11, 2023, reflects the borrower as “[Dad] and [Mom], Husband and Wife, currently residing at [667 Third Street], Plainfield, New

⁵ It is observed that the Springfield Lease term was November 1, 2021, through October 31, 2022, and that October 1, 2022, through April 30, 2023, would be seven months.

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Jersey” and that each borrower who signed the note owes the lender \$530,387, plus interest, for 667 Third Street, Plainfield. (R-1F.) The note, dated July 11, 2023, is initialed by Mom and Dad but signed only by Dad. (P-9.)

On January 24, 2024, Mom signed a Marriage Settlement Agreement, which reflects Mom’s address, beneath her signature, as 667 Third Street, Plainfield. The Marriage Settlement Agreement also reflects Dad’s address as 667 Third Street, Plainfield. Additionally, the Marriage Settlement Agreement reflects, inter alia, the following: that Mom and Dad separated on October 1, 2023; that Mom and Dad maintain joint legal custody of A.J.; and that Mom has sole physical custody of A.J. (R-4; R-4A.) With respect to the division of assets, the Settlement Agreement reflects, in pertinent part, the following:

- a. Marital Home. The parties agree the marital home will be sold and proceeds will be divided in the following percentages after payment of any mortgage and sales costs:

50% to [Mom] 50% to [Dad]

- b. Additional Real Property.

[Mom] will receive the following real property:

[766 Second Street] which is legally described as Investment Property

[Mom] agrees to buy out [Dad] interest in the investment property once the primary residence is sold. The buyout will be determined by appraising the house, and [Mom] will pay 50% of the equity, minus commission, taxes and fees.

- c. Other Assets. After the sale of the principal residence, both parties shall collaborate to settle the outstanding loan on the car, and upon full payment, the title shall be transferred to [Mom].

[R-4A.]

The Marriage Settlement Agreement was filed in Superior Court on January 25, 2024.

It was discovered that paperwork submitted to the school reflected A.J.'s address as Plainfield. On January 25, 2024, Springfield District residency investigator James Post commenced a residency investigation. Dad's vehicle is a gray sport utility vehicle (SUV). (R-2.) Mom's vehicle is a white Range Rover. (R-2.) Post's investigation report, dated February 3, 2024, concluded that the family did not reside in Springfield. (R-2.)

By notice of initial determination of ineligibility, dated February 12, 2024, Rachel Goldberg, Springfield District Superintendent, notified Mom and Dad via certified mail, at 667 Third Street, Plainfield, that it had come to the Board's attention that A.J. was not domiciled in Springfield and was no longer entitled to a free education within the Springfield District. (R-1B.)

By letter dated March 8, 2024, Michelle Calas, Springfield District School Business Administrator/Board Secretary, notified Mom and Dad at 667 Third Street, Plainfield, that after the Board conducted a hearing, it appeared that A.J. is domiciled in Plainfield and that the Board would take a formal vote seeking removal of A.J. from Springfield District at its March 18, 2024, meeting. (R-1G.) A resolution reflects that the Board found that A.J. was not domiciled in Springfield and should be immediately withdrawn and that Mom and Dad owed tuition in the amount of \$14,201.70 for the period of May 2023–March 2024. (R-1H.) By letter dated March 28, 2024, the Board's attorney notified Mom and Dad, at 667 Third Street, Plainfield, of the foregoing Board resolution.

On April 8, 2024, Post commenced a follow-up residency investigation because Mom had advised Springfield District that she and A.J. would be residing at 11 Fifth Street, Springfield, New Jersey⁸ during the school week. Post's follow-up investigation

⁸ A fictitious address is used for privacy.

report, dated May 27, 2024, concluded that the family did not reside in Springfield and were not staying at 11 Fifth Street, Springfield. (R-3.)

On April 18, 2024, petitioner filed a Pro Se Petition of Appeal, dated April 17, 2024 (Petition), with attachments, with the Department of Education. The Petition reflects petitioner's address as 11 Fifth Street, Springfield. Included with the Petition was a notarized letter from S.D., stating as follows:

[Mom] and [A.J.] resided with myself, [S.D.] and my wife at 11 Fifth Street, Springfield, NJ 07081 for the months of May 1, 2023, until July 31, 2023.

After July 31, 2023, [A.J.] and [Mom] stayed with us 4 days a week (the exact day of the week switched throughout this time period) while [A.J.] attended school up until the end of February 2024.

My wife and I agreed to let [A.J.] and [Mom] to stay with us permanently beginning March 12, 2024 until [Mom] is able to find a new residence.

Also included with the Petition was a letter from Mom, dated April 9, 2024, as follows:

I resided in Springfield at [46 First Street] and my lease was up April 30, 2023.

I resided on [11 Fifth Street], Springfield, NJ with my godmother and godfather ([S.D.]).

In July I was anticipating on moving, [Dad] took a mortgage on the house in Plainfield, [667 Third Street], Plainfield, NJ. Since we were currently married, I had to sign the mortgage documents as well. My name is not currently on the mortgage but my name is on the deed.

I anticipated on moving in with [Dad] until I discovered he committed adultery. At this point [Dad] moved into the home by himself. In my divorce paperwork it actually notated the date he committed adultery but I didn't find out until the end of July. As [Dad] proceeded to move to [667 Third Street] we began doing therapy sessions and made several attempts to try and reconcile while I was out of the house. When I filled out my divorce paperwork and it asked for

physical separation I notated October 2023 since this is when we decided to give up. I also noted this date to make sure if the house was sold I would be able to receive proceeds from the sale of the house.

At this time I also owned a multi-family, [766 Second Street], which I've owned since April 8, 2022. My lease started in Springfield at [46 First Street] November 2022. I was residing in Springfield while owning this house. My tenants signed a lease which didn't expire until November 2023, December 2023 and January 2024. I never renewed their lease because my husband, [Dad] and I are going through a divorce and trying to decide what we will do with the house. The units are still currently occupied and rented out.

The school board also mentioned when I filled out contact information I provided my mother's address, [12 Fourth Street], Plainfield NJ. This address has always been my mailing address which I explained to the school when I filled it out. When my daughter [A.J.] first attended the school, I provided them with my license which shows this same address and at the time my current address was [46 First Street]. I have attached a copy of my old license and new to show you I've never changed my address on license or as my mailing address.

When the RI did the investigation, unfortunately they chose the days her father picks [A.J.] up to follow him. [Dad] and I have an arrangement, he picks [A.J.] up from school Mondays and Wednesday's if he doesn't have to work overtime and drops her off to me by 8PM on those days. He also keeps her every other weekend. Due to [Dad's] work schedule, he is unable to have residential custody of [A.J.]. He works late and sometimes works weekends. He has to be to work at 6:00am in Secaucus, NJ and most days during the week he doesn't get off until 7:30pm. Before care and after care isn't available at those times, hence we agreed I will have residential custody of [A.J.]. The 2 days he was followed was on his days to pick her up, one which he returned her to me that evening and the other date was a Friday which it was his weekend to keep her.

The board asked me to send my divorce paperwork to show the anticipation of the sale of [667 Third Street], Plainfield, NJ and I offered to show them I had residential custody. I agreed to show them all the information that was relevant to this case and they tried to dissect the information they were able to see and made a determination but their conclusion was incorrect.

They pointed out [Dad] and I have joint legal custody, this is because in the state of NJ it is almost impossible to have sole custody but we have joint custody in regards to making decisions. I will provide the copy of the settlement agreement which is in regards to this case.

They also stated my agreement stated the document indicated that residence of the child shall not be changed but that wasn't the complete statement. It stated the residence couldn't be changed without notifying [Dad]. [Dad] is fully aware I have been staying in a few places with [A.J.]. I can have him write a letter if needed.

After the investigation and the hearing, my godparents agreed to allow me to reside in Springfield fully until I am able to find a place for [A.J.] and I. I submitted a notarized letter to the school.

The school agreed to allow [A.J.] to stay until June 21, 2024 but they are trying to charge me tuition because they are saying I wasn't domiciled in Springfield. I would like to appeal the decision for them charging me past tuition when my last permanent residence was in Springfield, NJ and for the entire school year I was staying from place to place because I didn't have a permanent residence. I stayed in Springfield, Edison, Piscataway and Plainfield since July. During the school year (September–February) I stayed in Springfield mostly during the week but I also spent a few nights in Edison, NJ, Piscataway, NJ, and Plainfield, NJ.

Finally, also included with the Petition was a letter from Mom, dated April 18, 2024, as follows:

I just wanted to address, I haven't been able to find an apartment yet because now I am no longer a two parent household. I am unable to afford a two bedroom apartment in areas with a good school district. [A.J.] came into Edward Walton School with special needs. She had a speech delay and was receiving services to assist with her delay. Education is very important to me so the school district where I will reside makes a difference. When I anticipated on moving into my marital home, we were going to be able to afford private school because we had both our incomes. Since I never went forward with moving in the house it caused me to go from place to place with my child. I am currently in a lottery for an apartment in Springfield, NJ and I

am actively looking. I expressed to Springfield Board of Education I didn't have a permanent residence and was living in different towns they didn't offer any resources or services.

The 2022–2023 per pupil cost for preschool was \$15,082, and the 2023–2024 per pupil cost for preschool was \$15,979.

Testimony

Rachel Goldberg

Mom left Springfield in April 2023, and there was no claim of or communication about displacement prior to the start of the residency investigation. Typically, in the event of a displacement, the families immediately make the Springfield District aware, and there is a very clear protocol that is followed in Springfield District. Mom's conversation with her about displacement was not until May 13, 2024. It is incumbent on a family to communicate a displacement to the Springfield District with some level of immediacy. There was no evidence that Mom was displaced from Springfield—rather it appears she was displaced from Plainfield. There was no claim of homelessness as of February 26, 2024, and it is the position of the Springfield District that even if Mom is homeless, she is homeless from Plainfield.

Michelle Calas

The Board allowed Mom additional time to submit documentation of domicile in Springfield. Mom provided a redacted portion of a marriage settlement agreement, but it does not reflect her domicile or residence in Springfield. She is not aware of any conversation between Mom and a Board member. She went back and forth with Mom about the marriage settlement agreement because there was no evidence of domicile in Springfield and the Board needed evidence linking A.J. to Springfield. Mom's last known permanent residence was her marital residence.

James Post

On Thursday, January 25, 2024, at 12:00 p.m., he went to 667 Third Street, Plainfield, but did not see Mom's Range Rover. He then went to 46 First Street, Springfield, where the apartment complex leasing manager advised him that the family had moved out in April 2023. Mom picked A.J. up from school at 4:20 p.m. He followed but lost sight of them. He returned to 667 Third Street, Plainfield and remained until 6:00 p.m. but never saw them, and there were no vehicles in the driveway. On Friday, January 26, 2024, A.J.'s grandmother and a male driver picked A.J. up from school at 4:55 p.m. in a Dodge Ram pickup. He followed them to a restaurant and then to 667 Third Street, Plainfield, where they entered the residence. On January 29, 2024, at 6:30 a.m., he went to 667 Third Street, Plainfield. Dad's SUV was in the driveway. He left shortly after 9:00 a.m. because school staff advised that A.J. had arrived on time, so it appeared she had slept elsewhere. That afternoon, Dad picked A.J. up in the SUV. He followed them to McDonald's and then to 667 Third Street, Plainfield. He went to 667 Third Street, Plainfield, on Wednesday, January 31, 2024,⁹ and Dad's SUV was in the driveway, but he did not see anyone. School staff advised that A.J. had arrived on time, so it appeared she had slept elsewhere. A.J.'s aunt picked her up from school. He followed them to 11 Fifth Street, Springfield, where they pulled into the driveway for a few minutes, then went to McDonald's and then to 12 Fourth Street, Plainfield. Thereafter, he went to 667 Third Street, Plainfield, but did not see A.J. get dropped off there. On Friday, February 2, 2024, and on the morning of Saturday, February 3, 2024, he went to 12 Fourth Street, Plainfield, and 667 Third Street, Plainfield, but did not see Mom's Range Rover at either address. Dad's SUV was parked in the driveway on both occasions.

On Monday, April 8, 2024, Dad picked A.J. up from school in the SUV at 4:45 p.m. He followed them but lost sight of them in Piscataway, near Stelton Road. On Thursday, April 11, 2024, Dad picked A.J. up from school at 3:50 p.m. and dropped her off at 12 Fourth Street, Plainfield, to Mom, whose Range Rover was parked at the curb. A.J. and Mom entered the home and then left a few minutes later in Mom's Range

⁹ His report reflects that he returned "the next day," so it is not clear if the date is accurate.

Rover. He followed them through Plainfield but lost sight of them. On Thursday, April 11, 2024, he monitored 11 Fifth Street, Springfield, from 8:00 p.m. until 10:00 p.m. but never saw Mom's Range Rover. On Wednesday, April 17, 2024, he monitored 11 Fifth Street, Springfield, from 6:30 a.m. until 8:45 a.m. The aunt's vehicle was parked in the driveway, but he never saw Mom's Range Rover. He left 11 Fifth Street, Springfield, and drove to the school, where he was advised that Mom had just dropped A.J. off, so they could not have slept at 11 Fifth Street, Springfield, the night before. He returned to 11 Fifth Street, Springfield, after leaving the school, but he did not see Mom's Range Rover. On Wednesday, April 24, 2024, he monitored 11 Fifth Street, Springfield, from 6:30 a.m. until 8:45 a.m., but there was no sign of Mom or A.J. He went to the school and observed Mom dropping A.J. off, so they could not have stayed at 11 Fifth Street, Springfield, the night before. He monitored 11 Fifth Street, Springfield, on Thursday, May 2, 2024, and Thursday, May 9, 2024, from 7:30 p.m. until 10:00 p.m. Both times the aunt's car was parked in the driveway, but there was no sign of A.J., Mom or the Range Rover. He observed 11 Fifth Street, Springfield, on Tuesday, May 14, 2024, from 6:30 a.m. until 8:45 a.m. The aunt's vehicle was parked in the driveway, but there was no sign of A.J. or Mom. He went to the school and observed Mom dropping A.J. off, so they could not have stayed at 11 Fifth Street, Springfield, the night before. He followed Mom to 11 Fifth Street, Springfield, where she parked behind the aunt's vehicle in the driveway and then entered the residence. He went to 11 Fifth Street, Springfield, on Wednesday, May 22, 2024, at 6:30 a.m. and observed the aunt's vehicle in the driveway. Mom's Range Rover was not there, but at approximately 8:25 a.m., A.J. and the aunt emerged from the home and drove to the school.

Mom

12 Fourth Street, Plainfield, was her childhood home and was owned by her mother and stepfather. Her stepfather and maternal grandfather presently live at that address. She keeps that address on her driver's license, and it is her mailing address. She put that address on the Student Information Sheet because it says, "How may I reach you"—for how the school could get in touch with A.J., not for where A.J. lives. She is a realtor and does a lot of business in Plainfield. Her business address is in Plainfield. The investment property apartments were and still are rented, so she could

not have resided there. She stayed with her godparents at 11 Fifth Street, Springfield from May 1, 2023, until the end of the school year. Dad did not stay there—he stayed at 667 Third Street, Plainfield. When she signed the 667 Third Street, Plainfield mortgage, she was planning to move into the marital home that she helped build and create, but she did not move in because, in July 2023, she was informed that Dad was cheating on her.

She told the Board that she was waiting to sell until spring or summer because she could get more money for the marital home in warmer weather and that she was living from house to house without a permanent residence. She still has no permanent residence. She is looking for low-income apartments but has not been accepted yet. She will probably have to wait until the divorce is finalized because she is not sure what is going to happen with the investment property and marital residence. She hired a lawyer a few weeks ago because she and Dad cannot come to an agreement. At the February 26, 2024, meeting and via email, she asked the Springfield District to provide her with information regarding being homeless. She asked for assistance and emailed Calas because she had no fixed, adequate residence. Nobody reached out to her, and Calas said it depends on the outcome of this case. She emailed the District in March 2024 about being displaced, and she went to the office and said she was displaced from 46 First Street, Springfield, and did not have a permanent residence.

She and Dad have an agreement that Dad picks A.J. up from school on Mondays and Wednesdays if he does not have to work overtime. Dad resides at 667 Third Street, Plainfield. She submitted screenshots of her gym entries. A.J. has swim lessons every Thursday at 6:20 p.m. Sometimes she picks A.J. up early for gymnastics at 5:00 p.m. and then swim lessons at 6:20 p.m. at Life Time gym in Bridgewater, New Jersey. After swim lessons, A.J. does the open swim, showers, and gets dressed at the gym, and then they get something to eat, so they do not get home until 10:30 p.m. on Thursdays. On Mondays and Wednesdays, Dad takes A.J. to Kumon on Shelton Road in Piscataway, New Jersey, for tutoring, and then drops A.J. off to her at 8:00 p.m. She could have left the house with A.J. prior to 6:45 a.m. and then dropped her off at school. On January 30, 2024, she rushed her stepfather, who has cancer, to the hospital. She goes to 12 Fourth Street, Plainfield almost every day because she helps cook for her

stepfather and grandfather. She might leave before 6:45 a.m. because some mornings she takes her stepfather to the doctor for treatment. She has had a lot of responsibilities since her mother passed away. Her godmother (“aunt”) and godfather reside at 11 Fifth Street, Springfield. She is allowed to stay there every day during the week during the school year. Post did not stay long enough to see her at 11 Fifth Street, Springfield.

She looked up her rights and what works in her favor, and there is no clear answer for what she is going through. She has never stated that her current residence is in Springfield. The Springfield apartment was her last permanent residence—her domicile—from which she was displaced. Since then, she has moved from place to place, staying with friends and family until she figures out her divorce. She submitted shipping confirmations for other places she has stayed and shipped things to. She is not on house arrest. She does not have to stay at her godfather’s house every single day of the week. She can stay out on her birthday. She is allowed to stay there every day during the week during the school year. There is no way she would enroll A.J. in a Plainfield public school. She would only reside in Plainfield if she was in a two-parent home and could afford private school. When living in Plainfield, they had a two-income household, so A.J. was going to be put into private school. Wherever she resides now, it must be in a good school district because she cannot afford private school anymore.

The Marriage Settlement Agreement does not specify who resides where or reflect where she would be staying with A.J. because she does not have a permanent address. She and A.J. are displaced, and Dad is in the marital home. She has no right to go into the marital home. Recently, Dad called the police on her at the marital home and said she was not allowed in because she does not live there. She created the Marriage Settlement Agreement document, and some things are not correct, like October 1, 2023. She entered the wrong dates. It does not make sense that the Marriage Settlement Agreement reflects the 667 Third Street, Plainfield address in January 2024, but also that she physically separated in October 2023. She is not an attorney and answered to the best of her knowledge. The Marriage Settlement Agreement has been amended and filed with the court. They are waiting to see the mediator and judge, but there are no dates yet. The marital residence cannot be sold

because she and Dad cannot settle, and now they have hired attorneys to determine what will happen with both properties. Neither property has been listed for sale.

LEGAL ANALYSIS AND CONCLUSION

Public schools are free to persons over five¹⁰ and under twenty years of age who are domiciled within the school district or whose parent moves from one school district to another school district as a result of being homeless and whose district of residence is determined pursuant to N.J.S.A. 18A:7B-12. N.J.S.A. 18A:38-1(a) and (f). No child under the age of five years shall be admitted to any public school, except as may be provided pursuant to law for children of such age. N.J.S.A. 18A:38-5. See N.J.S.A. 18A:44-1. The rules in N.J.A.C. 6A:22 were adopted to implement N.J.S.A. 18A:38-1(a) through (e). N.J.A.C. 6A:22-1.1(a).

If the school district finds that the parent of a child who is attending the schools of the district is not domiciled within the district, the superintendent or administrative principal may apply to the board of education for the removal of the child. N.J.S.A. 18A:38-1(b)(2). The parent is entitled to a hearing before the board, and, if in the judgment of the board, the parent is not domiciled within the district, the board may order the transfer or removal of the child from school. Ibid. The parent may contest the board's decision before the Commissioner of Education within twenty-one days of the date of the decision and is entitled to an expedited hearing. Ibid. The parent has the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in the statute. Ibid. Where the evidence does not support the claims of the parent, the Commissioner is authorized to assess tuition prorated to the time of the student's ineligible attendance in the schools of the district, and tuition is 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. Ibid.

¹⁰ The board of education of any district may establish a preschool school or department in any school under its control and shall admit to such preschool school or department any child who is under the age at which children are admitted to other schools or classes in such district. N.J.S.A. 18A:44-1.

Pursuant to N.J.A.C. 6A:22-3.1(a)(1), a student is eligible to attend a school district if he or she is domiciled within the school district, and a student is domiciled in the school district when he or she is the child of a parent whose domicile is located within the school district. When a student's parents are domiciled within different school districts and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the school district of the parent with whom the student lives for the majority of the school year—regardless of which parent has legal custody. N.J.A.C. 6A:22-3.1(a)(1)(i). When a student's physical custody is shared on an equal-time, alternating week/month or other similar basis so the student is not living with one parent for a majority of the school year and there is no court order or written agreement between the parents designating the school district of attendance, the student's domicile is the present domicile of the parent with whom the student resided on the last school day prior to the October 16 preceding the application date. N.J.A.C. 6A:22-3.1(a)(1)(ii). When a student resided with both parents, or with neither parent, on the last school day prior to the preceding October 16, the student's domicile is that of the parent with whom the parents indicate the student will be residing on the last school day prior to the ensuing October 16. N.J.A.C. 6A:22-3.1(a)(1)(ii)(1). When the parents do not designate or cannot agree upon the student's likely residence as of that date, or if on that date the student is not residing with the parent previously indicated, the student shall attend school in the school district of domicile of the parent with whom the student actually lives as of the last school day prior to October 16. Ibid. A student is domiciled in the school district when his or her parent resides within the school district on an all-year-round basis for one year or more, notwithstanding the existence of a domicile elsewhere. N.J.A.C. 6A:22-3.1(a)(4).

“Domicile” is defined as “the place where [a person] has his [or her] true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has an intention of returning.” T.B.W. ex rel. A.W. v. Bd. of Ed. of the Twp. of Belleville, Essex Cnty., 1998 N.J. AGEN LEXIS 122, Agency Dkt. No. 159-5/96, 1998 WL 668678 (N.J. Adm. June 18, 1998). As the court noted in Collins v. Yancey, 55 N.J. Super. 514, 520–21, 151 A.2d 68 (Law Div. 1959), a person may have several residences or places of abode, but only one domicile at a time. Id.

[D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist., 366 N.J. Super. 269, 273–74 (App. Div. 2004).]

A student is eligible to attend the school district pursuant to N.J.S.A. 18A:38-1(d)¹¹ if the student's parent temporarily resides within the school district and elects to have the student attend the school district of temporary residence, notwithstanding the existence of a domicile elsewhere. N.J.A.C. 6A:22-3.2(c). When required by the district board of education, the parent shall demonstrate that the temporary residence is not solely for the purposes of the student attending the school district of temporary residence. N.J.A.C. 6A:22-3.2(c)(1). When one of a student's parents temporarily resides in a school district while the other is domiciled or temporarily resides elsewhere, eligibility to attend school shall be determined in accordance with N.J.A.C. 6A:22-3.1(a)(1)(i). N.J.A.C. 6A:22-3.2(c)(2). However, no student shall be eligible to attend school based upon a parent's temporary residence in a school district unless the parent demonstrates, if required by the district board of education, that the temporary residence is not solely for purposes of a student's attending the school district. Ibid.

Notwithstanding the foregoing, a student over five¹² and under 20 years of age, pursuant to N.J.S.A. 18A:38-1, is eligible to attend school in the school district if the student's parent moves to another district as a result of being homeless, subject to the provisions of N.J.A.C. 6A:17-2 (Education of Homeless Children). N.J.A.C. 6A:22-3.2(d). Other than by reference to the applicable statutes and rules, N.J.A.C. 6A:22 does not address attendance at school by persons qualifying under N.J.S.A. 18A:38-1(f), which provides for attendance by homeless students and is implemented through N.J.A.C. 6A:17, Education of Homeless Children. Ibid. N.J.A.C. 6A:17 ensures that homeless children are provided a thorough and efficient education. N.J.A.C. 6A:17-1.1. "Homeless child" means a child who lacks a fixed, regular, and adequate

¹¹ Any person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district for the purposes of this section. N.J.S.A. 18A:38-1(d).

¹² See footnote 10.

residence, pursuant to N.J.S.A. 18A:7B-12¹³ and N.J.A.C. 6A:17-2.2. N.J.A.C. 6A:17-1.1.2. “School district of residence” for a homeless child means the school district in which the parent of a homeless child resided prior to becoming homeless. Ibid. It may not be the school district in which the student currently resides. Ibid. This term is synonymous with “school district of origin” referenced in the McKinney-Vento Homeless Education Assistance Act. Ibid. N.J.A.C. 6A:17-2 applies to district boards of education providing general education services to students in preschool through grade 12 and special education services to students ages three through 21. N.J.A.C. 6A:17-2.1. Nothing in N.J.A.C. 6A:17-2 limits the educational rights of homeless children or school district responsibilities under Subtitle VII-B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §§ 11431 et seq.). Ibid.

The district board of education for the school district of residence shall determine that a child is homeless for purposes of N.J.A.C. 6A:17 when the child resides in any of the following:

1. A publicly or privately operated shelter designed to provide temporary living accommodations, including:
 - i. Hotels or motels;
 - ii. Congregate shelters, including domestic violence and runaway shelters;
 - iii. Transitional housing; and
 - iv. Homes for adolescent mothers;
2. A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation, including:
 - i. Cars or other vehicles, including mobile homes;
 - ii. Tents or other temporary shelters;
 - iii. Parks;
 - iv. Abandoned buildings;
 - iv. Bus or train stations; or

¹³ The district of residence for children whose parent or guardian temporarily moves from one school district to another as the result of being homeless shall be the district in which the parent or guardian last resided prior to becoming homeless. N.J.S.A. 18A:7B-12(c). For the purpose of this amendatory and supplementary act, “homeless” shall mean an individual who temporarily lacks a fixed, regular and adequate residence. Ibid.

- v. Temporary shelters provided to migrant workers and their children on farm sites;
- 3. The residence of relatives or friends where the homeless child or youth resides out of necessity because the child's or youth's family lacks a regular or permanent residence of its own; or
- 4. Substandard housing.

[N.J.A.C. 6A:17-2.2(a).]

The school district of residence for a homeless child shall be responsible for the education of the child and shall: (1) determine the school district in which the child shall be enrolled after consulting with the parent pursuant to N.J.A.C. 6A:17-2.5; (2) pay the cost of tuition pursuant to N.J.S.A. 18A:38-19 when the child attends school in another school district; and (3) provide for transportation for the child pursuant to N.J.A.C. 6A:27-6.2. N.J.A.C. 6A:17-2.3(a). The determination of a homeless child's school district of residence shall be made by the chief school administrator of the school district of residence, or the chief school administrator's designee, pursuant to N.J.A.C. 6A:17-2.4, based upon information received from the parent, a shelter provider, another school district, or an involved agency. N.J.A.C. 6A:17-2.3(b). The district identified in accordance with N.J.S.A. 18A:7B-12 as the school district of residence for a homeless child shall be the school district of residence until the parent establishes a permanent residence. N.J.A.C. 6A:17-2.3(c). Financial responsibility will remain with the homeless child's school district of residence until the family is deemed domiciled in another jurisdiction, pursuant to N.J.S.A. 18A:38-1(d). Ibid.

Mom argues that during the period in question she “experienced severe emotional and psychosocial stressors, including homelessness,” and that her “defense wasn’t that [she] was currently domiciled in Springfield rather [she] was last domiciled in Springfield.” Mom further argues that she was going through a divorce and was homeless, and because she did not have a permanent home, she has been residing with relatives or friends since May 1, 2023.

Petitioner has the burden of proof by a preponderance of the evidence that A.J. is eligible for a free education in Springfield. Although Mom now argues she is homeless, more than a year had passed prior to the residency investigation, and neither parent ever notified the Springfield District that A.J. was “homeless.” Per N.J.A.C. 6A:17-2.2(a)(3), a child is homeless if the child resides in the residence of relatives or friends “out of necessity because the child's family lacks a regular or permanent residence of its own.” That is not the case here. A.J.’s family did not and does not lack a residence. Mom owns the three-family investment property¹⁴ at 766 Second Street, Plainfield, and Mom and Dad own the “marital home”¹⁵ at 667 Third Street, Plainfield. The leases on Mom’s investment property in Plainfield expired in November 2023 and December 2023, and there is no evidence that there was any attempt by Mom to owner-occupy a unit; Mom testified that neither the investment property nor the marital home has been listed for sale. Mom’s testimony that she and Dad entered into a marriage settlement agreement whereby only Dad may remain in the marital residence, is extremely troubling as it purposefully renders their child homeless—and this is not a situation where Dad is absent, as he has repeatedly been observed picking A.J. up from school, and she has been observed entering the marital residence. Further, there is no evidence of any emergent relief application in connection with the divorce because of the alleged homelessness of Mom and A.J. Under the circumstances, I **CONCLUDE** that A.J. is not homeless for McKinney-Vento or residency purposes. Therefore, A.J.’s eligibility to attend school in Springfield turns upon domicile.

Mom has presented no credible documentation of domicile in Springfield beyond April 30, 2023, when the Springfield Lease expired. It is observed that the Springfield apartment was leased by both Mom and Dad in October 2021, and the September 2022 addendum extending the lease was also signed by both Mom and Dad. Thus, it appears that Mom and A.J. had been living with Dad since at least November 2021; Mom and Dad were married in January 2023; and Mom testified that she was not aware of Dad’s infidelity until July 2023—the end of July 2023, according to Mom’s April 9, 2024, letter. There is no explanation for why Mom and A.J. would have been living with Mom’s godparents in Springfield in May, June and July 2023, as stated in the letter from

¹⁴ Referred to as such in the Marriage Settlement Agreement.

¹⁵ Referred to as such in the Marriage Settlement Agreement.

Mom's godfather, or until the end of the 2022–2023 school year as testified to by Mom, rather than with Dad in Plainfield—especially after ownership was transferred to Mom on July 11, 2023—except for the purpose of making A.J. eligible for a free education in Springfield. Mom has made it clear that she would never enroll A.J. in Plainfield public schools and that it had been her intention to enroll A.J. in private school while living in Plainfield as a two-parent household. However, the fact that her current divorce may have resulted in an inability to afford private school does not negate her domicile in Plainfield. Further, the Marriage Settlement Agreement—drafted by Mom—reflects that Mom resided at 667 Third Street, Plainfield until October 2023, as that was the date of separation, and under Mom's signature it reflects her address as 667 Third Street, Plainfield—despite Mom's claims that she always uses 12 Fourth Street, Plainfield as her address. Mom also received—whether in person or from Dad—the letters from the Springfield District addressed to 667 Third Street, Plainfield.

Mom's investment property is in Plainfield, and the marital home is also in Plainfield. Mom's driver's license and the Student Information Sheet reflect a Plainfield address. Although Mom argues that she has always used her childhood address of 12 Fourth Street, Plainfield as her address, she did not use that address on her Marriage Settlement Agreement—even after claiming she had no permanent address. Mom's testimony and documents are in conflict, improbable under the circumstances, and do not support domicile in Springfield. Further, as already noted, Mom argues that her “defense wasn't that [she] was currently domiciled in Springfield rather [she] was last domiciled in Springfield.” As noted above, Mom's argument that she and A.J. are homeless is unpersuasive, and the record reflects that A.J. has not been domiciled in Springfield since May 1, 2023. Thus, even if Mom and A.J. were homeless, they would be homeless from the marital residence in Plainfield. I therefore **CONCLUDE** that petitioner has not satisfied her burden to prove by a preponderance of the credible evidence that she was domiciled in Springfield after April 30, 2023.

In sum, **CONCLUDE** that A.J. was ineligible for a free education in the Springfield District for the remainder of the 2022–2023 school year, commencing on May 1, 2023, and was ineligible for a free education in the Springfield District for the 2023–2024 school year. As such, I further **CONCLUDE** that the parents owe tuition to

the Springfield Board in the total amount of \$17,594.64 for A.J.'s period of ineligible attendance¹⁶ during the 2022–2023 school year and 2023–2024 school year, calculated as follows: the per pupil tuition for preschool for 2022–2023 was \$15,082, which is \$83.79 per diem, times 32 days of ineligible attendance (per the Supplemental Certification), for a total of \$2,681.28; and the per pupil tuition for preschool for 2023–2024 was \$15,979, which is \$88.77 per diem, times 168¹⁷ days of ineligible attendance (per the Supplemental Certification), for a total of \$14,913.36. Finally, I **CONCLUDE** that A.J. should be disenrolled from the Springfield District.

ORDER

It is **ORDERED** that petitioner's Pro Se Petition of Appeal be and hereby is **DISMISSED**. It is further **ORDERED** that the parents pay to the Board tuition in the amount of **\$17,594.64** for the period of ineligible attendance of A.J. in the Springfield District during the 2022–2023 school year and 2023–2024 school year and that A.J. is hereby disenrolled from the Springfield District.

I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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.

¹⁶ The Supplemental Certification appears to only have utilized days on which A.J. was present in school rather than school days during the period of ineligible attendance.

¹⁷ Since the student was ineligible for the 2023–2024 school year, the total tuition would be \$15,979, but the Supplemental Certification alleges only 168 days of ineligible attendance, and therefore that is the number utilized in the calculation of tuition owed.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to **ControversiesDisputesFilings@doe.nj.gov** or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.



August 23, 2024

DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:

am

APPENDIX

Witnesses

For Petitioner:

A.J. (Mom)

For Respondent:

Rachel Goldberg

Michelle Calas

James Post

Exhibits

For Petitioner:

- P-1 April 9, 2024, Letter
- P-2 April 17, 2024, Notarized Letter
- P-3 Unit 1 Lease
- P-4 Unit 2 Lease
- P-5 Unit 3 Lease
- P-6 Mailings/Time Stamp Documents
- P-7 Lease Agreement, 46 First Street, Springfield
- P-8 Addendum to Lease Agreement, 46 First Street, Springfield
- P-9 Note, dated July 11, 2023

For Respondent:

- R-1A (Not in Evidence)
- R-1B February 12, 2024, Letter (Notice of Initial Determination of Ineligibility)
- R-1C Student Information Sheet
- R-1D Mortgage (Partial), 766 Second Street, Plainfield
- R-1E Deed (Partial), 667 Third Street, Plainfield

- R-1F Mortgage (Partial), 667 Third Street, Plainfield
- R-1G March 8, 2024, Letter
- R-1H Board Resolution
- R-1I (Not in Evidence)
- R-2 Residency Investigation, dated February 3, 2024
- R-3 Residency Investigation, dated May 27, 2024
- R-4 Marriage Settlement Agreement (Redacted, Pages 1–10)
- R-4A Marriage Settlement Agreement (Pages 2, 3, and 4 of 10)
- R-5 Certification of Michelle Calas, dated July 18, 2024
- R-5A Supplemental Certification of Michelle Calas, dated August 13, 2024