

## New Jersey Commissioner of Education

### Final Decision

J.F., on behalf of minor child, J.J.C.,

Petitioner,

v.

Board of Education of the Town of West New York,  
Hudson County,

Respondent.

### Synopsis

*Pro se* petitioner appealed the determination of the respondent Board that she and her minor child, J.J.C., were not domiciled in the respondent Board's school district (District) and that J.J.C. was therefore not entitled to a free public education in the West New York schools during the 2023-2024 school year; the Board contended that a residency investigation proved that petitioner was domiciled in North Bergen, not West New York. The petitioner subsequently failed to appear for two pre-hearing telephone conferences; on the date of the scheduled in-person hearing, petitioner J.F. sent an email at 12:22 a.m. stating that she was withdrawing her appeal. The ALJ granted the petitioner's request to withdraw but continued with the scheduled hearing on an *ex parte* basis in order for the Board to present its claim for tuition reimbursement.

The ALJ found, *inter alia*, that: petitioner withdrew her appeal; thereafter, the Board presented its proofs regarding petitioner's alleged residency in North Bergen at the in-person hearing; J.J.C. was not domiciled in West New York during the 2023-2024 school year, as the uncontested proofs and credible testimony presented by the Board showed that his parents were domiciled in North Bergen during the relevant time period; based on this competent and credible evidence, the ALJ concluded that J.J.C. was domiciled with petitioner in North Bergen, and was therefore not eligible for a free public education in West New York schools. Accordingly, the ALJ ordered that petitioner owes the Board \$18,214.28 for the period of J.J.C.'s ineligibility from September 1, 2023, through June 30, 2024.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter, with modification to the amount of tuition owed by petitioner. Accordingly, the Commissioner ordered petitioner to reimburse the Board in the amount of \$18,213.30, based on the per diem tuition of \$102.90 and 177 days of ineligible attendance by J.J.C., as presented in the Certification of the District's Business Administrator. The petition of appeal 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.

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

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Petitioner,

v.

Board of Education of the Town of  
West New York, Hudson County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the petitioner pursuant to *N.J.A.C.* 1:1-18.4 have been reviewed and considered. The West New York Board of Education (Board) did not file a reply to petitioner's exceptions.

The Board determined that petitioner's child was not eligible to attend school in West New York because petitioner was domiciled in North Bergen. Petitioner appealed, and the case was transmitted to the OAL. Petitioner subsequently sent the OAL an email indicating that she "would like to dismiss the appeal, as [she is] not in town due to a family emergency." The Administrative Law Judge (ALJ) notified the parties that petitioner's request to withdraw would be granted but that the hearing would proceed because notice had been given. Following the hearing, at which only the Board appeared, the ALJ concluded that petitioner lives in North Bergen and that J.J.C. was not entitled to a free public education in West New York during the 2023-2024 school year.

The ALJ assessed tuition against petitioner in the amount of \$18,214.28 for 177 days of J.J.C.'s ineligible attendance in West New York.

Petitioner's exceptions indicate that petitioner withdrew her appeal because J.J.C.'s permanent address is now in West New York. Petitioner includes a copy of her driver's license, listing an address in West New York. Petitioner also supplied a copy of a driver's license for A.H., listing the same address in West New York that is on petitioner's license, and a statement from A.H. indicating that he allowed petitioner and her family to reside periodically with him during the 2023-2024 school year due to the family's financial hardship. Petitioner argues that imposing a fee for a child's education is unreasonable, and states, "I trust this evidence [will] resolve the matter."

Upon review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain her burden of establishing that she was domiciled in West New York. The Commissioner further concurs with the ALJ's conclusion that petitioner's minor child was, therefore, not entitled to a free public education in the District during that time.

With regard to petitioner's exceptions, *N.J.A.C. 1:1-18.4(c)* provides that evidence not presented at the hearing shall not be submitted as part of an exception. Accordingly, the information submitted by petitioner, which was previously not part of the record, is not properly before the Commissioner.<sup>1</sup>

Moreover, petitioner withdrew her petition of appeal and is now precluded from arguing that the Board's residency decision was incorrect. Petitioner had the opportunity to make that argument to the ALJ, and to present any testimony or other evidence to support that claim during the hearing,

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<sup>1</sup> However, this does not preclude the District from considering this information, or any other information that petitioner may present, if she seeks to re-enroll J.J.C. in the District based on her alleged updated living circumstances.

but she did not avail herself of that opportunity. As such, there is no basis to overturn the Board's residency determination.

The Commissioner further notes that the Board's determination is supported by the facts it presented during the hearing. Even if petitioner's exceptions were considered, the information she provides does not demonstrate that she was domiciled in the District or that J.J.C. was entitled to a free public education there during the relevant time period.

Pursuant to *N.J.S.A. 18A:38-1b*, the Commissioner shall assess tuition against petitioner for the time period during which the minor children were ineligible to attend school in the District. Therefore, the Board is entitled to tuition reimbursement in the amount of \$18,213.30<sup>2</sup> for September 13, 2023 through the end of the 2023-2024 school year, during which time petitioner's minor child was ineligible to attend school in the District.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, as modified with respect to the amount of the tuition reimbursement. Petitioner is directed to reimburse the Board in the amount of \$18,213.30. J.J.C. shall be disenrolled from the District. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>3</sup>



ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2024

Date of Mailing: November 6, 2024

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<sup>2</sup> This amount is based on the per diem tuition of \$102.90 and 177 days of ineligible attendance listed in the Certification of the District's Business Administrator. The Initial Decision orders tuition reimbursement of \$18,214.28, which is the total amount of reimbursement requested in the certification, but which appears to be the result of a mathematical error.

<sup>3</sup> 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 08873-24

AGENCY DKT. NO. 150-5/24

**J.F. ON BEHALF OF MINOR CHILD J.J.C.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWN  
OF WEST NEW YORK, HUDSON COUNTY,**

Respondent.

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**No appearance by J.F.**, petitioner, pro se

**Philip H. Gertner**, Esq., for respondent (Taylor Law Group, LLC, attorneys)

Record Closed: August 30, 2024

Decided: September 10, 2024

BEFORE **KIMBERLY K. HOLMES**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, J.F. is domiciled in North Bergen, New Jersey. Her minor child, J.J.C. lives with her. They do not live in West New York, New Jersey. Is petitioner entitled to a free public school education in West New York? 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 her family meet no exception to this law.

### **PROCEDURAL HISTORY**

On April 17, 2024, the Board issued a Notice of Final Ineligibility regarding the attendance of minor child, J.J.C., at West New York Public Schools.

On May 2, 2024, J.F. filed her pro se Residency Appeal on behalf of J.J.C.

On June 19, 2024, the Board filed an Answer and Counterclaim.

On June 26, 2024, the New Jersey Department of Education, Office of Controversies and Disputes, transmitted the case to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23.

On July 3, 2024, I was assigned this case.

On July 19, 2024, the first prehearing conference was scheduled. After having received notification electronically and by mail at the West New York address, J.F. failed to participate in the scheduled telephone conference.

On July 23, 2024, the second prehearing conference was scheduled. After having received notification electronically and by mail, J.F. appeared albeit late, and participated in the second scheduled telephone conference. At that time, L.C., the husband of J.F. and father to J.J.C., appeared.

On that same date, I issued a Prehearing Order, which set the in-person hearing date for August 23, 2024, and directed the parties to exchange discovery and their witness lists ten days before the hearing. On that date, neither J.F. nor L.C. appeared for the hearing. Rather, J.F. sent an email at 12:22 a.m. stating that she was withdrawing her appeal and was out of town for a family emergency. At 9:03 a.m., my judicial assistant

notified J.F. and Mr. Gertner, counsel for the respondent, that J.F.'s request to withdraw the appeal would be granted but that the respondent's counter claim for tuition reimbursement would be heard. Therefore, an ex parte hearing took place at the OAL in Newark, New Jersey, on August 23, 2024. The record remained open until August 30, 2024, to allow the respondent an opportunity to submit a Certification of the per diem tuition rate.

The record closed on August 30, 2024.

### **DISCUSSION AND FINDINGS OF FACT**

The New Jersey Lease Agreement had the landlord's last name and signature as "Jacobe." J.F. and L.C. signed this Lease Agreement dated August 1, 2023, which ran from August 1, 2023, to August 1, 2024. (R-5.)

Three rent receipts for November 2023, December 2023, and January 2024, had the landlord's signature as "Jacobe." (R-5.)

A PSE&G bill for \$70.45 from a Mr. Portillo with the exact same address as was on the Lease Agreement for West New York was in the file. (R-1; R-5.)

Allan C. Roth, Esq., is the Administrative Assistant to the Superintendent of Schools for the Board. Under oath, Roth stated that Portillo was a relative of J.F.

A \$535.10 T-Mobile phone bill bearing J.F.'s name and West New York address was in her file. (R-5.)

The Board has levels of documentation that would suffice to establish residency in West New York. A lease, a deed, tax records and a utility bill were all types of documents that are held in the highest regard by the Board for validation of residency. A telephone bill receipt is on the lowest level of acceptability for residency by the Board.

The Board accepts lower-level documentations as proof of residency when other higher tier documents are coupled with the submission. To put it another way, a telephone bill and a lease would be strong indicators of residency whereas a telephone bill alone would not suffice.

On the deed, the owners' names were listed as "Jacome and Vivar, his wife." The address on the deed was for the address in West New York. The block and lot numbers were listed as 15 and 14 respectively. No other evidence was presented to show that anyone else owned the property other than Jacome. (R-6.)

The tax records for 6611 Hudson Avenue, listed Jacome and Vivar as the owners of block 15 and lot 14. There was no other evidence presented that anyone else paid the taxes from 2022 to 2024 on the property other than Jacome. The tax payment history shows that the last payment was made by Jacome on February 6, 2024. (R-6; R-7.)

Roth did an internet search of the parcel of land and presented a "NJ Parcel Ownership" document for 6611 Hudson Avenue. Under "owner information," Jacome and Vivar were listed with the exact same lot and block number as was provided in the deed and tax records. Here too, there was no other evidence presented that anyone else owned the property at that location other than Jacome. (R-6, R-7 and R-8.)

Three photographs were taken during the daytime by Lauren Curillo, the Assistant Principal, and investigated by Residency Compliance Officer Diaz. All photographs were from or near the address in North Bergen. The first one showed L.C. carrying a blue laundry bag with clothes inside at 4:15 p.m. on February 12, 2024, in North Bergen. L.C. was walking into that building. (R-1; R-2.)

The second photograph depicted a parked white car that belonged to J.F. near that address in North Bergen. (R-3.)

The third photograph showed L.C., J.F., and an unidentified person walking across the street to J.F.'s white vehicle which was parked in North Bergen. (R-3; R-4.)



A document which bore the title “Top New Jersey Bulldog Breeders” listed “JJS Puppy World” with the contact information for the address in North Bergen. It listed the email address and telephone number J.F. provided for the appeal for the matter at hand. (R-9.)

Roth submitted a timeline report of the residency investigation, which documented the residency home visit notes dated November 17, 2023, and March 13, 2024. The report delineated the excessive absences of J.J.C., and the behavior J.F. exemplified toward the staff of the Board when presented with questions regarding her residency.

The report also showed that on February 1, 2024, an employee of the Board for West New York saw J.F. parking her car in North Bergen at 4:40 p.m. and in the same area the next day at 11:00 a.m. (R-1.)

Curillo saw J.J.C. at 8:42 a.m. leaving from the address in North Bergen on February 12, 2024. (R-1.)

Diaz checked the mailboxes at the address in West New York, and neither J.F. nor L.C.’s names were listed on any mailbox. (R-1.)

The voter registration for L.C. listed his address in North Bergen. (R-10.)

On August 23, 2024, Roth testified that J.J.C. was a general education student who did not receive special education services.

On August 26, 2024, Dean Austin, the Business Administrator to the Board, submitted a Certification which outlined the tuition assessment at a rate of \$102.90 per day for each day of ineligible enrollment. Austin described this tuition rate as that applying to a sixth-grade student, including J.J.C., for the 2023-2024 school year.

During the entire 2023–2024 school year, J.J.C. attended PS #4 in West New York. The Board seeks tuition reimbursement for the 2023-2024 school year as it was determined that J.J.C. was not eligible for a tuition-free education.

After the hearing, Austin confirmed that J.J.C.'s start date was September 13, 2023. The Certification stated that J.J.C. was "improperly registered" in the district for one hundred and seventy-seven days for a total of \$18,214.28 of tuition reimbursement owed by J.F. and L.C. to the Board for the 2023–2024 school year.

Given the discussion of the facts, I **FIND** that petitioner lives in North Bergen. She does not live in West New York.

### **CONCLUSIONS OF LAW**

Public school shall be free to a minor who is domiciled within the school district, N.J.S.A. 18A:38-1(a); New Jersey has consistently held that the domicile of the child follows the domicile of the parent, Shim v. Rutgers, 191 N.J. 374, 399 (2007); and if a student does not have a right to attend the school district, the Commissioner may assess tuition, N.J.A.C. 6A:22-6.2.

In this case, J.J.C. was not domiciled in West New York as the uncontested proofs and credible testimony of Roth showed that his parents were domiciled in North Bergen. 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). Based on the mountain of competent and credible evidence, I **CONCLUDE** that the domicile of the minor child J.J.C. was that of J.F. and L.C. in North Bergen not West New York.

N.J.A.C. 6A:22-6.2(a) authorizes the Commissioner of Education to assess tuition for non-resident students prorated" to the time of the student's ineligible attendance in the school district."

Based upon the facts adduced at the hearing through Roth's credible testimony and Austin's Certification, I **CONCLUDE** that J.F., L.C. and minor child J.J.C., were not domiciled within the West New York School District during the 2023–2024 school year, and that J.J.C. is not entitled to a free public education there. I also **CONCLUDE** that the Board is entitled to tuition reimbursement, retroactive from September 13, 2023, to June

30, 2024, for one hundred seventy-seven days, calculated at the rate of \$102.90 per day, which totals \$18,214.28. The \$102.90 daily rate is the rate applicable to a general education student attending school in the district, and it is the rate used to calculate the total annual per pupil cost to the district.

### **ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that J.F. and L.C. owe the Board \$18,214.28 for the period of J.J.C.'s ineligibility from September 1, 2023, through June 30, 2024.

Based upon the foregoing, it is **ORDERED** that this residency appeal is **DISMISSED** and that J.J.C. be disenrolled from the Town of West New York Schools. It is further **ORDERED** that respondent's counterclaim seeking tuition reimbursement is **GRANTED**. It is further **ORDERED** that J.F. and L.C. reimburse the Board, at a daily tuition rate of \$102.90, for the period beginning September 1, 2023, to June 30, 2024.

It is further **ORDERED** that the J.F. and L.C. owe the Board the cost of tuition for an out-of-district student, J.J.C., for his attendance at Town of West New York (P.S. #4) in the amount of \$18,214.28.

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 under 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 **ACTING**

**COMMISSIONER OF THE DEPARTMENT OF EDUCATION.** Exceptions may be filed by email to [ControversiesDisputesFilings@doe.nj.gov](mailto: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.



September 10, 2024

DATE

KIMBERLY K. HOLMES, ALJ

Date Received at Agency:

September 10, 2024

Date Mailed to Parties:

September 10, 2024

Isr

**APPENDIX**

**WITNESSES**

For Petitioner:

None

For Respondent:

Allan C. Roth, Esq., Administrative Assistant to the Superintendent

**EXHIBITS**

For Petitioner:

None

For Respondent:

- R-1 Timeline of Residency Investigation
  - Residency Home Visit Notes dated November 17, 2023, and March 13, 2024
- R-2 Photo of L.C. with a blue laundry bag in North Bergen
- R-3 Photo of white car belonging to J.F. in North Bergen
- R-4 Photo of J.F. walking to white car in North Bergen
- R-5 Submitted Lease by J.F. and L.C.
  - PSE&G bill for Mr. Portillo for 6611 Hudson Ave., Apt 2, WNY
  - J.F. T-Mobile bill for 611 Hudson Ave., Apt. 2, WNY
- R-6 Deed for 6611 Hudson Avenue, WNY
- R-7 Tax Records for 6611 Hudson Avenue, WNY
- R-8 NJ Parcel Ownership for 6611 Hudson Avenue, WNY
- R-9 J.F. posting for 7200 Park Avenue, North Bergen
- R-10 Voter registration for L.C. (7200 Park Avenue, Apt, 301, North Bergen)
- R-11 PS #4 Log Entries