

New Jersey Commissioner of Education
Final Decision

L.H., on behalf of minor child, N.J.,

Petitioner,

v.

Board of Education of the City of South Amboy,
Middlesex 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 (ALJ) that petitioner and her minor child, N.J., were not domiciled in South Amboy between October 21, 2023 and the end of the school year in June 2024, or between the first day of school in September 2024 and March 18, 2025.¹ The Commissioner further concurs with the ALJ's conclusion that N.J. was, therefore, not entitled to a free public education in South Amboy during that time. The Commissioner also concurs with the ALJ that N.J. should be permitted to complete the 2024-2025 school year at South Amboy High School on a tuition basis so that he may graduate with his peers in June 2025.

¹ According to the South Amboy Public Schools district calendar, the 2023-2024 school year ended on June 25, 2024, and the 2024-2025 school year began on September 5, 2024. See South Amboy Public Schools District Calendar, https://sapublicschools.com/district-calendar?cal_date=2024-06-01, https://sapublicschools.com/district-calendar?cal_date=2024-09-01 (last accessed May 27, 2025).

Pursuant to *N.J.S.A. 18A:38-1(b)*, the Commissioner shall assess tuition against petitioner for the time period during which N.J. was ineligible to attend school in South Amboy. The Board is entitled to tuition reimbursement in the amount of \$10,992 for the period of ineligible attendance from October 21, 2023, through June 25, 2024 (\$73.28/day x 150 days); \$2,200.38 for the period of ineligible attendance from September 5, 2024, through October 20, 2024 (\$70.98/day x 31 days); and \$6,175.26 for the period of ineligible attendance from October 21, 2024, through March 18, 2025 (\$70.98/day x 87 days).²

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed. Petitioner is directed to reimburse the Board in the amount of \$19,367.64 for tuition costs incurred when N.J. was ineligible to attend school in South Amboy. If N.J. remained or remains enrolled in the district beyond March 18, 2025, on a tuition basis, petitioner is liable to the Board for tuition costs at the per diem rate of \$70.98 for each additional day of enrollment.

IT IS SO ORDERED.³


COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2025
Date of Mailing: June 2, 2025

² The tuition calculations are based upon information supplied in a certification by Dr. Frederick Williams, Superintendent of Schools, which specified the per diem tuition rates for 2023-2024 and 2024-2025, as well as the number of days of N.J.'s ineligible attendance.

³ 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

SUMMARY DECISION

OAL DKT. NO. EDU 15970-24

AGENCY DKT. NO. 336-10/24

L.H. ON BEHALF OF MINOR CHILD N.J.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
SOUTH AMBOY, MIDDLESEX COUNTY,**

Respondent.

L.H., petitioner, pro se

Douglas M. Silvestro, Esq., for respondent (Busch Law Group, LLC, attorneys)

Record Closed: March 27, 2025

Decided: April 15, 2024

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

L.H. on behalf of minor child N.J. challenges the determination by respondent, the Board of Education of the City of South Amboy (Board), that N.J. is not and has not been domiciled in the respondent's school district. Under N.J.S.A. 18A:38-1(a), public schools shall be free to a minor who is domiciled within the school district. The Board seeks N.J.'s

removal from the District, as well as reimbursement for the period of ineligibility that N.J. attended school in the district.

PROCEDURAL HISTORY

On October 2, 2024, the respondent notified petitioner L.H. that N.J. was not entitled to a free education in the City of South Amboy Public School District (District) because the family lives outside the District and has not lived in South Amboy for four years. On October 21, 2024, L.H. appealed the District's decision. On November 6, 2024, the respondent filed an answer.

On November 7, 2024, the Department of Education, Office of Controversies and Disputes, transmitted the case to the Office of Administrative Law as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing.

The matter was scheduled for a pre-hearing conference on December 10, 2024. The petitioner requested an adjournment to obtain counsel. The matter was rescheduled to January 16, 2025. Petitioner said she obtained an attorney but would not be able to speak with him until January 23, 2025. The matter was scheduled for a status conference on January 24, 2025. Subsequent status conferences were held on February 11, 2025, and February 18, 2025. Respondent informed the tribunal of its intent to file a motion for summary decision. A motion schedule was set for the filing of and response to the motion for summary decision. All submissions from the parties were received by March 27, 2025.

FINDINGS OF FACT

Based on the documents submitted in support of the motion for summary decision and the due-process petition, I **FIND** the following as **FACT**:

1. Petitioner, L.H., is the mother of N.J. and is domiciled in the city of Parlin, New Jersey. (Pro Se Residency Appeal.)

2. Dr. Frederick Williams is the superintendent of schools, South Amboy Board of Education. (Williams Certif. at ¶ 1.)
3. The South Amboy Board of Education (Board), through its residency/enrollment renewal process, where all enrolled students' families were required to resubmit proof of their residency, found out that the petitioner's address is not within the district. (Williams Certif. at ¶¶ 3, 4.)
4. On August 26, 2024, L.H. was notified by Dr. Williams that N.J. was not entitled to a free education in the City of South Amboy Public School District because "a review of documents provided as part of the district's Residency Renewal process reveals that your address . . . is in Parlin, NJ, which is located within the Sayreville School District, not the South Amboy School District." (R-1, South Amboy Public School District Notice of Initial Determination of Ineligibility.)
5. Petitioner claimed that the Parlin address was a temporary residence while the South Amboy home located on Alpine Street (Alpine Home) was undergoing renovations. (Williams Certif. at ¶ 5.)
6. The Board conducted a search of New Jersey property records and found that the Alpine Home was sold in July 2022. (Williams Certif. at ¶ 6.)
7. On September 30, 2024, at the Board's public meeting, the Board adopted a resolution removing N.J. from the District based on lack of residency. (Williams Certif. at ¶ 13.) On October 2, 2024, a final notice of ineligibility was sent to the petitioner. (Id. at ¶ 14.)
8. Petitioner has not resided in the District since approximately July 2022. (Williams Certif. at ¶ 6.)
9. The petitioner appealed the decision on October 21, 2024. (Pro Se Residency Appeal.) In her appeal she stated, "attendance is being denied

because our address is not in South Amboy currently but will be in the next few weeks[.] [A]ttached is a Power of Attorney giving legal guardianship to a South Amboy family friend where N.J. is currently residing.” (Ibid.)

10. The petitioner, in her response letter to the motion for summary decision, admitted that the Alpine Home was sold in 2022. (Petitioner’s Response Letter).
11. Petitioner at no time denied that she lives at the Parlin address. (Ibid.)
12. N.J. is a senior in high school and wrote a moving letter to this tribunal. In part he wrote:

I was born and raised in South Amboy. For most of the time I lived with my mother and grandmother. We planned to renovate our residence due to the structure of the house being very unstable and outdated. Due to inflation as a direct result of the pandemic, the cost of all resources quadrupled in price and we were forced to sell the house in 2022. . . . At 17 years old I was met with the task of providing for my family where it is usually the child who is the one who is provided for. . . . Now I’m no judge or jury, Your Honor, I can’t tell you if my enrollment in this school district is right or wrong, but I know this. The potential gain of \$13,000 and the removal of a model student is at the expense of a priceless future.

[P-1.]

13. The District’s per-diem tuition rate for the South Amboy High School for the 2023–2024 school year was \$73.28 per day. There were 150 school days between October 21, 2023, and the last date of June 2024. (Williams Certif. at ¶¶ 19, 22.)
14. The District’s per-diem tuition rate for the South Amboy High School for the 2024–2025 school year is \$70.98 per day. (Williams Certif. at ¶ 18.)

15. There were 31 school days between the first day of school for the 2024–2025 school year and the date of the Petition. (Williams Cert. at ¶ 21.)
16. There were 87 school days between the date of the Petition and March 18, 2025. (Williams Certif. at ¶ 20.)

CONCLUSIONS OF LAW

A party may move for summary decision upon any or all of the substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. “The decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b).

In this case, no genuine issue as to any material fact exists, and the Board is entitled to prevail as a matter of law for the reasons stated below.

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 of the Department of Education may assess tuition, N.J.A.C. 6A:22-6.2. The petitioner has the burden of proof in a determination of residency ineligibility. N.J.S.A. 18A:38-1.

Where 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 to 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.

In this case, N.J. is domiciled in Parlin, New Jersey, with his mother, L.H. Petitioner in her appeal stated her residence as Parlin, New Jersey. L.H. provided a power of attorney giving legal guardianship to a friend, noting that is where the student is residing. However, this is only for the purpose of completing the school year. Petitioner had numerous conflicting statements: they would be at a Perth Amboy address in a few weeks; they are not in good standing at the Parlin address; she admitted selling the South Amboy Home in 2022; and the student is living with family friends. Petitioner, however, has not denied that her address is in Parlin, NJ, a location that is outside of the District.

I therefore **CONCLUDE** that the determination of the Board that N.J. was not domiciled in South Amboy during the following time frames—approximately 150 school days from October 21, 2023, to the last school day in June 2024; approximately 31 school days between the first day of school in the 2024–2025 school year and October 20, 2024 (the date of petitioner’s appeal); and approximately 87 school days since the filing of the petition and March 18, 2025—should be upheld and the petition of appeal should be dismissed pursuant to N.J.A.C. 1:1-14.4.

The Board asserts that it is entitled to be reimbursed for tuition for the period of N.J.’s ineligible enrollment at South Amboy High School. When the evidence does not support the claims of the resident, the Commissioner of Education is authorized to assess tuition pursuant to N.J.A.C. 6A:22-6.2(a), which provides as follows:

If an appeal to the Commissioner is filed by the parent, guardian, adult student, or school district resident keeping an "affidavit" student and the petitioner does not sustain the burden of demonstrating the student’s right to attend the school district, or the petitioner withdraws the appeal, fails to prosecute, or abandons the appeal by any means other than settlement agreeing to waive or reduce tuition, the Commissioner may assess tuition for the period during which the hearing and decision on appeal were pending, and 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.

N.J.S.A. 18A:38-1(b) likewise requires that tuition be calculated on the basis of 1/180 of the total annual per-pupil cost to the district multiplied by the number of days of ineligible attendance.

In accordance with N.J.A.C. 1:1-14.4(d), I have accepted the proofs from the Board relating to its tuition claim. The Board's proofs are convincing, and its calculations are consistent with the requirements of N.J.S.A. 18A:38-1(b) and N.J.A.C. 6A:22-6.2(a). Therefore, I **CONCLUDE** that the Board has demonstrated an entitlement to tuition reimbursement for 150 days of school attendance for N.J. for the period from October 21, 2023, through June 2024 in the amount of \$10,992.00 (\$73.28 X 150); tuition reimbursement for 31 school days between September 2024 and October 20, 2024, in the amount of \$2,200.38 (\$70.98 X 31); tuition reimbursement for 87 school days between October 21, 2024, and March 18, 2025, in the amount of \$6,175.26 (\$70.98 X 87); and tuition reimbursement for the amount of school days from March 19, 2025, through the date when N.J. is disenrolled.

N.J. has requested to remain at South Amboy High School and finish the few more months he has until graduation. This student has approximately two to three months before the end of his school year and approximately four years of spending time at South Amboy High School. The courts have looked favorably to continuity of education and resolve disputes by ascertaining the best interest of the child. Levine v. Levine, 322 N.J. Super. 558, 565–66 (App. Div. 1999), certif. denied, 163 N.J. 75 (2000). In J.E. v. J.E., 2017 N.J. Super. Unpub. LEXIS 1110 (App. Div. May 4, 2017) (quoting Levine, 322 N.J. Super. at 567), the court found that “a school is more than its teacher-student ratio or State ranking. The age of its buildings, the number of computers or books in its library and the size of its gymnasium are not determinative of the best interest of an individual child during his or her school years. Equally, if not more important, are peer relationships, the continuity of friends and an emotional attachment to school and community that will hopefully stimulate intelligence and growth to expand opportunity.” This is so significant here. This student has gone through so much, and to lose his friends and be removed from his school and teachers in the last three months of his high school education would be, as he puts it, “at the expense of a priceless future.”

Moreover, in J.G. ex rel. S.G. v. Lenape Regional High School District Board of Education, 2013 N.J. AGEN LEXIS 50 (March 4, 2013), adopted, 2013 N.J. AGEN LEXIS 453 (April 3, 2013), the administrative law judge (ALJ) found that, although the school district properly determined that the child was ineligible to attend school due to having moved outside of the district, “it is now March of [the child’s] senior year. Thus, fairness dictates that [the child] should remain at [the school] until she graduates, particularly when there is no other reason for removal.” The ALJ cited R.D.F. v. Board of Education of the Westwood Regional School District, 1999 N.J. AGEN LEXIS 120 (February 4, 1999), adopted, Comm’r (March 23, 1999), <https://www.nj.gov/education/legal/>, where the ALJ found that the children were not entitled to a free and appropriate public education within the school district due to being domiciled outside of the school district, and ordered that the children should be disenrolled, unless they became eligible for attendance at the school. However, the Commissioner, while adopting the ALJ’s decision, held that, due to the timing of the decision being in March of the school year, the children were permitted to complete the school year on a tuition basis, notwithstanding the parents’ option to disenroll the child.

Based on the above, I **CONCLUDE** that N.J. should be permitted to complete the school year at South Amboy High School on a tuition basis. The parent has an option to disenroll N.J. The respondent would be entitled to further reimbursement of tuition in the amount of \$70.98 per day from March 19, 2025, through the end of the school year if N.J. remains until the end of the school year or until he is disenrolled.

ORDER

It is **ORDERED** that respondent’s motion for summary decision is **GRANTED** and the petition is **DENIED** based upon petitioner’s failure to meet her burden of proof that the District acted arbitrarily or capriciously disputing N.J.’s entitlement to a free education in the South Amboy Public School District.

It is further **ORDERED** that the Board of Education of the City of South Amboy is entitled to tuition reimbursement from petitioner in the amount of \$10,992.00 for the 150 school days N.J. attended while ineligible in the 2023–2024 school year; in the amount of

\$2,200.38 for the 31 school days N.J. attended while ineligible from the beginning of the 2024–2025 school year until the filing of the appeal (September 2024–October 20, 2024); and in the amount of \$6,175.26 for the 87 school days N.J. attended while ineligible between October 21, 2024, and March 18, 2025.

I further **ORDER** that N.J. is permitted to remain at South Amboy High School to complete his senior year, on a tuition basis. The parent has the option to disenroll N.J. However, if N.J. remains in school until the end of the school year, the petitioner will further reimburse the respondent tuition in the amount of \$70.98 per day from March 19, 2025, through the end of the school year, or if the parent disenrolls N.J. earlier, tuition is to be reimbursed from March 19, 2025, through the date of disenrollment.

I hereby **FILE** this 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 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.

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**. 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.

April 15, 2025

DATE



JOAN M. BURKE, ALJ

Date Received at Agency:

Date Mailed to Parties:

JMB/js/jm

APPENDIX

Exhibits

For Petitioner:

Pro Se Residency Appeal

Response letter to Motion for Summary Decision

P-1 Letter from N.J.

For Respondent:

Respondent's Answer, Motion for Summary Decision, Brief with Certification of
Frederick Williams, Superintendent, South Amboy Board of Education

R-1 Notices to parent