

**New Jersey Commissioner of Education  
Final Decision**

H.C. on behalf of minor children,  
J.C., J.C., J.C. and J.C.,

Petitioner,

v.

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

Respondent.

**Synopsis**

*Pro se* petitioner appealed the determination of the respondent Board that H.C. and his family did not reside within the Elizabeth School District during the 2018-2019 school year and the beginning of the 2019-2020 school year. The Board alleged that H.C. was domiciled in Rahway, not Elizabeth, during this time period, and sought tuition reimbursement from petitioner. A hearing in the matter was held at the Office of Administrative Law (OAL) on January 21, 2020.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:38-1(a), public school is free to children domiciled within the school district; the domicile of a child follows that of the parent; the Commissioner may assess tuition if a child is not entitled to attend school in the district; in the instant case, petitioner and his family resided in an apartment in Elizabeth until the summer of 2018, when they moved in with H.C.'s in-laws in Rahway; the family remained in Rahway until November 1, 2019, when they moved into an apartment on William Street in Elizabeth; and the minor children continued to attend school in Elizabeth for the entire 2018-2019 school year, and the beginning of the 2019-2020 school year, while they were domiciled in Rahway. The ALJ concluded that the children were not entitled to attend Elizabeth schools during the 2018-2019 school year and the 2019-2020 school year up to November 1, 2019; accordingly, petitioner owes respondent tuition for this period of ineligible attendance.

Upon review of the record in this matter, the Commissioner concurred with the ALJ that petitioner failed to sustain his burden of establishing that he was domiciled in Elizabeth during the relevant time period, and that the children were therefore not entitled to a free public education in the District's schools. Accordingly, the Commissioner assessed tuition due to the Board in the total amount of \$69,440 for the education of J.C., J.C., J.C. and J.C. for the period of their ineligible attendance. The petition was dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

June 1, 2020

121-20

OAL Dkt. No. EDU 15927-19  
Agency Dkt. No. 261-9/19

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

H.C., on behalf of minor children,  
J.C., J.C., J.C., and J.C.,

Petitioner,

v.

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

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that petitioner failed to sustain his burden of establishing that he was a domiciliary of Elizabeth for the entire 2018-2019 school year and the beginning of the 2019-2020 school year, through November 1, 2020. The Commissioner further concurs with the ALJ's conclusion that the minor children were, therefore, not entitled to a free public education in the District's schools during that time.

Pursuant to *N.J.S.A.* 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time period during which the minor children were ineligible to attend school in Elizabeth. Therefore, the Board is entitled to tuition reimbursement in the total amount of \$69,440 for the 2018-

2019 school year and the beginning of the 2019-2020 school year through November 1, 2020, during which time petitioner's minor children were ineligible to attend school in respondent's district.<sup>1</sup>

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$69,440 for tuition costs incurred during the time period in which J.C., J.C., J.C., and J.C. were ineligible to attend school in Elizabeth. The petition of appeal is hereby dismissed.

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

COMMISSIONER OF EDUCATION

Date of Decision: June 1, 2020

Date of Mailing: June 2, 2020

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<sup>1</sup> The tuition is calculated as follows:

J.C. and J.C. (second grade and fourth grade): \$14,245 for 2018-2019 plus \$2,928.18 (37 days at a per diem rate of \$79.14) for 2019-2020 = \$17,173.18 per child

J.C. (eighth grade): \$14,243 for 2018-2019 plus \$2,927.81 (37 days at a per diem rate of \$79.13) for 2019-2020 = \$17,170.81

J.C. (tenth grade): \$14,867 for 2018-2019 plus \$3,055.83 (37 days at a per diem rate of \$82.59) for 2019-2020 = \$17,922.83

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



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

**INITIAL DECISION**

OAL DKT. NO. EDU 15927-19

AGENCY DKT. NO. 261-9/19

**H.C. ON BEHALF OF MINOR CHILDREN**

**J.C., J.C., J.C., AND J.C.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF**

**ELIZABETH, UNION COUNTY,**

Respondent.

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**H.C.**, petitioner, pro se

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

Record Closed: April 22, 2020

Decided: April 22, 2020

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

**STATEMENT OF THE CASE**

During the summer of 2018, petitioner H.C. and his family moved from Elizabeth, New Jersey, to Rahway, New Jersey, where they lived until they returned to Elizabeth to live on November 1, 2019. Should public school be free to petitioner and his children in

Elizabeth while they lived in Rahway? 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 his family meet no exception to this law.

### **PROCEDURAL HISTORY**

On September 12, 2019, respondent, the Board of Education of the City of Elizabeth, reviewed petitioner's applications for the enrollment of his four children in the Elizabeth School District and determined that they were ineligible to attend school in the district.

On September 23, 2019, petitioner filed an appeal with the Department of Education, Office of Controversies and Disputes, and on October 31, 2019, respondent filed its answer.

On November 12, 2019, the Department 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 under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On January 21, 2020, I held the hearing.

On February 18, 2020, respondent filed its closing arguments. Although petitioner did not file his closing brief at that time, I kept the record open to give him the opportunity to do so. To date, I have not received a closing argument from petitioner. Accordingly, I closed the record.

### **FINDINGS OF FACT**

Based on the testimony the parties provided, and my assessment of its credibility, together with the documents the parties provided, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

On May 29, 2019, William Buteau, an Investigator for the Elizabeth Public School District, began an investigation of petitioner and his family because the District suspected that petitioner and his family no longer resided in Elizabeth, New Jersey. At that time, the address the District had on file for petitioner and his family was 911 Jackson Avenue, Elizabeth, New Jersey, and the mail was still being delivered to petitioner and his family at that address. Petitioner and his family, however, were no longer living there. As petitioner testified, he and his family had moved out of the apartment at 911 Jackson Avenue to live with his in-laws in Rahway, New Jersey, from the summer of 2018 through the summer of 2019, because the apartment at 911 Jackson Avenue was too expensive, but petitioner intended to return to Elizabeth with his family once they found a less expensive apartment. Buteau discovered that the exact address in Rahway was 300 W. Lincoln Avenue, and that utilities were opened in the name of petitioner at that address. Meanwhile, petitioner's children still attended school in the Elizabeth public schools. In fact, the owner of 911 Jackson Avenue reported that he saw petitioner's wife drop the children off at the corner of Jackson Avenue and Alina Street so they could take the bus to school.

On June 3, 2019, Buteau found an additional address for the family, 152 Jefferson Avenue, Elizabeth, New Jersey, and when he went to visit that address, he discovered it was a coffee shop where petitioner's wife worked. When asked where she lived, she answered that she and her family were living in Rahway while an apartment was being renovated for them in Elizabeth. The address for the apartment was 1146 E. Grand Street. Given this information, Buteau advised petitioner's wife that she and her husband had to complete a Residency Verification Form and return it to the Board of Education of the City of Elizabeth by June 6, 2019.

The following day, the Board sent petitioner Notices of Initial Determination of Ineligibility for his four children.

On June 10, 2019, petitioner provided respondent with the lease to a new apartment. The address was 1066–1068 William Street, Apartment 2-L, Elizabeth, New Jersey, and the term of the lease was July 1, 2019, to June 30, 2020. Petitioner also

provided an insurance card and a document from a utility, but the document from the utility had no address on it.

On August 26, 2019, Buteau went to the new apartment at William Street. It is a four-family home with two apartments upstairs and two apartments downstairs. Butuea was let in by one of the tenants, who told Buteau that no one was living in apartment 2-L. When Buteau knocked on the door to 2-L, no one answered. Meanwhile, a tenant from 2-R opened his door and told Buteau that no one lived in 2-L. At the hearing, petitioner admitted that he and his family did not move into the apartment until August 1, 2019, but petitioner also admitted that the apartment had not been completely renovated until November 2019. Accordingly, petitioner and his family did not move into the apartment until November 2019, and in fact, did not reside in Elizabeth for the entire 2018–19 school year, as well as from the beginning of the 2019–20 school year until the beginning of November 2019.

Tuition for J.C., J.C., J.C., and J.C., as out-of-district students during this relevant time period, is as follows:

- Second Grade            \$14,245            with a per-diem rate of \$79.14
- Fourth Grade            \$14,245            with a per-diem rate of \$79.14
- Eighth Grade            \$14,243            with a per-diem rate of \$79.13
- Tenth Grade            \$14,867            with a per-diem rate of \$82.59

### **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, petitioner and his family lived with his in-laws at 300 W. Lincoln Avenue, Rahway, New Jersey, from the summer of 2018 until the beginning of

November 2019. Yet, petitioner still sent his children to school in Elizabeth, New Jersey. Although petitioner intended to return to Elizabeth, he never notified respondent that he had moved. As such, I **CONCLUDE** that petitioner was domiciled in Rahway from the summer of 2018 until the beginning of November 2019, and that petitioner owes respondent the tuition for out-of-district students for the entire 2018–19 school year, as well as for the period from the beginning of the 2019–20 school year until the beginning of November 2019.

### **ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that petitioner owes respondent the tuition for out-of-district students for the entire 2018–19 school year, as well as for the period from the beginning of the 2019–20 school year until the beginning of November 2019.

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 is authorized by law to make a final decision in this case. 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 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 **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



April 22, 2020

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**BARRY E. MOSCOWITZ, ALJ**

Date Received at Agency:

April 22, 2020

Date Mailed to Parties:  
sej

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**APPENDIX**

Witnesses

For Petitioner:

H.C.

For Respondent:

William Buteau, Investigator

Documents

For Petitioner:

None

For Respondent:

R-1 Memo to File/Summary of File/Investigative Report undated