New Jersey Commissioner of Education

Final Decision

B.M. and P.M., on behalf of minor children, P.M. and C.M.,

Petitioners,

٧.

Board of Education of the Borough of Milltown, Middlesex County,

Respondent.

The record of this matter, the hearing transcript, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioners pursuant to *N.J.A.C.* 1:1-18.4 have been reviewed and considered. Respondent Board of Education of the Borough of Milltown (Board) did not file a reply.

This dispute involves the Board's August 27, 2024, determination that petitioners' minor children were ineligible to receive a free education in the district because they lived with their parents outside of the district in North Brunswick. Petitioners appealed the Board's determination on September 18, 2024. A contested hearing was held at the OAL on May 19, 2025, during which petitioners and other witnesses testified.

Upon consideration of the testimony, exhibits, and post-hearing briefs, the Administrative Law Judge (ALJ) issued an Initial Decision containing detailed findings of fact and conclusions of

law. The ALJ found that between November 16, 2023, and March 6, 2025, petitioners and their children lived in North Brunswick while their new home was being constructed in Milltown. Once they received a temporary certificate of occupancy, they moved into the Milltown home. The ALJ concluded, based upon a lack of credible evidence, that petitioners and their children did not move to North Brunswick out of necessity and were not homeless. Because the children continued to attend school in Milltown when they lived in North Brunswick, the ALJ found that petitioners are responsible for payment of tuition to the Board.

Petitioners take exception to the ALJ's findings that certain portions of their testimony were inconsistent with the documentary evidence, thereby diminishing their overall credibility. In support of their position, they referenced and submitted four documents that were not part of the hearing record. Finally, they reiterate that it was never their intent to reside out of district, but that they ultimately did so due to various circumstances beyond their control.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter. Under New Jersey law, children are entitled to a free public education in the school district in which they are domiciled. *N.J.S.A.* 18A:38-1(a). "A student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district." *N.J.A.C.* 6A:22-3.1(a)(1). *See Somerville Bd. of Educ. v. Manville Bd. of Educ.*, 332 *N.J. Super.* 6, 12 (App. Div. 2000) ("A child's domicile is normally that of his or her parents."), *aff'd*, 167 *N.J.* 55 (2001). The parent "shall have the burden of proof by a preponderance of the evidence' to prove domicile in the school district." *D.L. v. Bd. of Educ. of Princeton Reg'l Sch. Dist.*, 366 *N.J. Super.* 269, 273 (App. Div. 2004) (quoting *N.J.S.A.* 18A:38-1(b)(2)).

The Commissioner concurs with the ALI's conclusion, based upon the testimony and documentary evidence in the record, that petitioners and their children were domiciled in North Brunswick between November 16, 2023, and March 6, 2025. While they always intended to move back to Milltown and experienced delays in the construction of their new home, the fact remains that they were domiciled in North Brunswick during the time period in question. There is no evidence in the record to support their contention that they were homeless or moved to North Brunswick out of necessity. They resided in an adequate, single-family home in North Brunswick and their children had their own bedrooms. Thus, the Commissioner holds that the children were ineligible to attend school free of charge in Milltown pursuant to *N.J.S.A.* 18A:38-1(a) when they lived in North Brunswick.

The ALI's conclusions in this matter are intertwined with credibility determinations that are entitled to deference. Pursuant to *N.J.S.A.* 52:14B-10(c), the Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." "When such a record, involving lay witnesses, can support more than one factual finding, it is the ALI's credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole." *Cavalieri v. Bd. of Trs. of Pub. Empl. Ret. Sys.*, 368 *N.J. Super.* 527, 537 (App. Div. 2004). "[I]t is not for . . . the agency head to disturb [the ALI's] credibility determination, made after due consideration of the witnesses' testimony and demeanor during the hearing." *H.K. v. Dep't of Human Servs.*, 184 *N.J.* 367, 384 (2005).

The Commissioner finds no reason to disturb the ALJ's assessment of petitioners' credibility. The ALJ's credibility findings are not arbitrary, capricious, or unreasonable. On the contrary, they are fully supported by the record. Petitioners' exceptions on this point are unpersuasive. Moreover, petitioners' exceptions violate *N.J.A.C.* 1:1-18.4(c), which prohibits the submission of, or reference to, evidence not presented at the hearing. Here, the regulations do not permit the Commissioner to consider the four new documents submitted by petitioners that were not presented as evidence during the hearing.

Consequently, because they failed to satisfy their burden of proof in this matter, the Commissioner shall assess tuition against petitioners for the time period during which the children were ineligible to attend school in Milltown. Pursuant to *N.J.A.C.* 6A:22-6.2(a), "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) provides that the Commissioner may order tuition "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."

In its post-hearing brief, the Board specified the tuition amount sought with explanatory citations to per-diem tuition rates and school calendars contained in the record. For C.M., the Board requested \$10,710 (126 school days x \$85 per day) for 2023-2024, and \$10,255.44 (114 school days x \$89.96 per day) for 2024-2025. For P.M., the Board requested \$10,899 (126 school

days x \$86.50 per day) for 2023-2024, and \$10,132.32 (114 school days x \$88.88 per day) for 2024-2025. Thus, the total tuition sought by the Board for both children is \$41,996.76.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed. The Board's claim for tuition payments is granted. Petitioners shall pay the Board \$41,996.76 for the children's tuition costs accrued during the period they were ineligible to attend school free of charge in Milltown.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: October 31, 2025
Date of Mailing: November 3, 2025

¹ The ALJ's tuition calculations in the Initial Decision assessed slightly higher 2023-2024 tuition amounts for C.M. and P.M. It appears that the ALJ utilized 132 school days in the calculation, while the Board utilized 126. The Commissioner relies upon the Board's calculations herein.

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.



INITIAL DECISION

OAL DKT. NO. EDU 14942-24 AGENCY DKT. NO. 306-9/24

B.M. AND P.M. ON BEHALF OF MINOR CHILDREN P.M. and CM.,

Petitioners,

٧.

BOROUGH OF MILLTOWN BOARD OF EDUCATION,

Respondent.

James M. Curran, Esq., for petitioners (Law Office of James Curran, P.C., attorneys)

Aron G. Mandel, Esq., for respondent (Busch Law Group LLC, attorneys)

Record Closed: August 18, 2025 Decided: September 23, 2025

BEFORE **ALLISON FRIEDMAN**, ALJ:

STATEMENT OF THE CASE

From November 16, 2023, through March 6, 2025, brothers P.J.M.¹ and C.M. lived with their parents in North Brunswick while attending Milltown Public Schools without good reason. Are P.J.M. and C.M. entitled to a free education from the Milltown School District during that period? No. A child will still be allowed to attend their previous school district if the child is homeless when they reside in the residence of relatives temporarily out of necessity because the family lacks a regular or permanent residence of its own. N.J.A.C. 6A:17-2.2(a)(3).

PROCEDURAL HISTORY

On May 1, 2024, P.M. and B.M., parents of P.J.M. and C.M., entered a tuition-reimbursement agreement with the Milltown School District (Milltown).

On August 27, 2024, Milltown informed P.M. and B.M. that their children were not residents of Milltown and would be disenrolled in the district after the parents became non-compliant with the reimbursement agreement.

On September 17, 2024, P.M. and B.M. filed an appeal of the non-residency determination with the Department of Education. On October 10, 2024, Milltown filed its answer to the petition. On October 15, 2024, the Board 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 -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On May 19, 2025, I held the hearing, and on August 18, 2025, I closed the record upon receipt of closing briefs.

2

¹ The initials for the minor P.J.M. are being used rather then the as captioned (P.M.) to avoid confusion between his father who is also P.M.

DISCUSSION AND FINDINGS OF FACT

B.M., mother of P.J.M. and C.M., grew up in Milltown in a home on Highland Drive that is currently owned by her mother, J.P. When B.M. married P.M. they moved from Milltown to North Brunswick. After having children (P.J.M. and C.M.), P.M. and B.M. decided to raise their children in Milltown. They bought a 700-square-foot three-bedroom home on Townsend Street. (Tr. 135.)

In 2022, P.M. and B.M. sold the family home on Townsend Street. (Tr. 93.) On April 28, 2022, P.M. and B.M. entered into a lease agreement for an apartment on Clay Street, also in Milltown, where their children shared a room. (Tr. 157.)

Around this same time, P.M. and B.M. entered into a "handshake" agreement with company Property Management General Contracting and contractor James Flood (collectively PMGC) to put an addition on the Highland Drive home so that the entire family could live together.

As construction began on the Highland Drive home, P.M. and B.M. decided to rebuild the home rather than build an addition. In June 2023, B.M. obtained a new driver's license with the Clay Street address. (R-4 at 35.) On July 25, 2023, a contract was signed with PMGC to rebuild the Highland Drive home. (R-3.) The construction of a larger home on Highland Drive was expected to take six months. (R-3; Tr. 162.) On October 5, 2023, B.M. notified the district of the change of address from Townsend to Clay Street. Around that same time, J.P. was diagnosed with cancer and in the hospital. (R-4.) Upon discharge from the hospital, J.P. moved to Chelsea, a residential facility that J.P. paid for. J.P. did not return to the Highland Drive home until March 2025. (Tr. 123–24.)

On November 15, 2023, the family moved from Clay Street to a larger home in North Brunswick. P.M. and B.M. claimed that the family was illegally locked out of the apartment upon returning from a baseball tournament. Although it was an allegedly illegal and unexpected lockout, the family had all their valuable property with them, such as televisions, computers, schoolwork, and clothes. These facts support that there was no

illegal lockout and that P.M. and C.M. decided to leave Clay Street and move to a larger home in North Brunswick.

On December 23, 2023, Milltown received an email from the landlord of the Clay Street property, Scott Johnkins, with information that C.M. and P.J.M. no longer resided in the Clay Street apartment. (P-16 at 28.)

On January 2, 2024, Milltown emailed B.M. requesting a current address for her children and proof of residency.

On April 24, 2024, B.M. emailed Stephanie Brown, superintendent of Milltown Schools, explaining that the construction at the Highland Drive home was a remodel and not a new residence. (R-6.) However, the facts in that email are inconsistent with the contract (P-1) that states that the work was for a rebuild, not a renovation. Brown's response to B.M. later that same day explained the legal restrictions and the children's continued non-resident status in Milltown. (P-24 at 49.) P.M.'s response email claims that the family is going through economic hardship, having had to pay for J.P.'s residential care. (P-24 at 48–49.) However, that claim is in complete contrast to P.M.'s testimony that Chelsea was costing J.P. too much. (Tr. 124:22–24.)

Perhaps most troubling is P.M. and B.M.'s claim of financial hardship because they were paying for the construction. P.M. and B.M. provided checks that were made out to the contractor. (P-8 to P-14.) However, Milltown provided the bank records of a joint TD Bank account belonging to J.P., B.M., and B.M.'s brother that show \$100,000 withdrawn from that account and deposited into B.M.'s checking account to pay for the construction on the Highland Drive home. (R-6 at 55–66.) The lack of full disclosure diminishes their statements to Milltown, as well as their testimony. B.M. and P.M. not only had their respective incomes but also had the proceeds from the sale of the Townsend Street home. Further, J.P. paid the rent for the North Brunswick home not B.M. and P.M. The record is devoid of any evidence that P.M. or B.M. endured economic hardship.

On April 29, 2024, B.M. provided Milltown with an affidavit of residency. (R-6 at 45.) In that affidavit both B.M. and J.P. swore that their residence was on Highland Drive.

However, when asked where she and her family "resided" at that time, B.M.'s answer is telling: "It would have been Hoover." Additionally, with each move the family made their home became larger: an apartment on Clay where the boys had to share a room, to a ranch home in North Brunswick where the boys each got their own room, to Highland where the children got their own rooms, and J.P.'s home now had an in-law suite. The multiple and significant contradictions between the testimony of P.M. and B.M. and between the testimony and the admitted exhibits diminish the credibility of their testimony.

While the family lived in the North Brunswick home, B.M. drove the children to their respective schools and picked them up either after school or after sports to return them to the North Brunswick home to do their homework and other daily activities, eat, and sleep. C.M. was enrolled in third grade in the Milltown schools for the 2023–2024 school year, and in fourth grade in the Milltown schools for the 2024–2025 school year. P.J.M. was enrolled in eighth grade in the Milltown schools for the 2023–2024 school year and enrolled as a freshman at Spotswood High School as Milltown's send-receive agreement required for the 2024–2025 school year. The children's belongings were maintained at the North Brunswick home.

B.M. attested that the family lived at the Highland Drive home; however, there is no evidence that the children ever slept in, let alone lived in, the Highland Drive home. The family lived in the North Brunswick home until March 6, 2025, when the temporary certificate of occupancy was issued for the Highland Drive home in Milltown.

Given my discussion of the facts, I **FIND** that in November 2023 P.M. and B.M. moved from Milltown to North Brunswick. The family moved out of Milltown on November 15, 2023. From November 16, 2023, P.J.M. and C.M. slept at, ate at, did their daily activities at, and were driven to and from Milltown schools by B.M. from the North Brunswick home. P.M. and C.M. maintained their education and social life in Milltown. P.M. and B.M. did not suffer an economic hardship. On March 6, 2025, a temporary certificate of occupancy was issued for the Highland Drive property and the family moved in that day.

² The North Brunswick residence was on Hoover Drive.

SCHOOL DAYS:

There are 180 total academic school days for both 2023 and 2024 school years. (R-16; Tr. 183–184:11.)

2023–24 132 school days after November 15, 2023.

2024–25 114 school days prior to March 6, 2025.

TUITION:

2023–24	3rd grade (C.M.) annual tuition \$15,302 (R-13 at 130; Tr. 179:9–183:7), per diem \$85 (R-13)
2024–25	4th grade (C.M.) annual tuition \$16,192 (R-14 at 146), per diem \$89.96 (R-14)
2023–24	8th grade (P.J.M.) annual tuition \$15,570 (R-13 at 130), per diem \$86.50
2024–25	Spotswood High School (P.J.M.) annual tuition \$16,000 (R-14 at 146), per diem \$88.88

TOTAL TUITION:

For C.M.		For P.J.M.	
2023–24	\$11,221.47	2023–24	\$11,418.00
2024-25	\$10,255.90	2024–25	\$10,133.33

TOTAL TUITION for C.M. and P.M.: \$43,028.70

DISCUSSION AND CONCLUSIONS OF LAW

A child's right to a free education in the district where the child resides is well settled. A.M.S. ex rel. A.D.S. v. Bd. of Educ. of Margate, 409 N.J. Super. 149, 160–61 (App. Div. 2009). Parents P.M. and B.M. argue that the exception of homelessness applies to their children. A child will still be allowed to attend their previous school district

if the child is homeless when they reside in the residence of relatives temporarily out of necessity because the family lacks a regular or permanent residence of its own. N.J.A.C. 6A:17-2.2(a)(3). Homeless "shall mean an individual who temporarily lacks a fixed, regular and adequate residence." N.J.S.A. 18A:7B-12(c). This includes children who share housing with others due to a loss of their housing from economic hardship or similar reasons. 42 U.S.C. § 11434a.

Here, P.M. and B.M. argue that the family was homeless after being locked out of the Clay Street apartment and moved to North Brunswick out of necessity. However, the evidence petitioners presented does not support their argument. The evidence tells a different story. P.M. and B.M. made a series of voluntary choices, to rebuild rather than put on a simple addition, and to move to North Brunswick into a larger family home where their children would have their own rooms and J.P. paid the rent. Further, petitioners failed to demonstrate a financial need to move to North Brunswick. P.M. and B.M. had the proceeds from the sale of their first home; they were both employed; and J.P. paid for her stay at the residential facility, as well as the rent for the North Brunswick home, and provided the money to B.M. and P.M. to pay for the rebuilding of the Highland Drive home. P.M. and B.M. and their children had a fixed, regular, and adequate residence in North Brunswick for the period of time at issue. Additionally, there is no credible evidence to support the need to stay in North Brunswick for more than a year rather than move back to Milltown. Thus, there is no credible evidence to support that B.M. and P.M. lived in North Brunswick out of necessity or were homeless.

Accordingly, I **CONCLUDE** that P.J.M. and C.M. did not move to North Brunswick out of necessity and they were not homeless from November 16, 2023, to March 6, 2025. I **FURTHER CONCLUDE** that P.J.M. and C.M. were not residents of Milltown from November 16, 2023, through March 6, 2025, and therefore they were not entitled to a free public education from the Milltown School District for that period.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that P.M. and B.M. reimburse the Milltown School District a total sum of \$43,028.70 for the tuition of P.M. and

C.M. for 246 school days during the period of November 16, 2023, through March 6, 2025, at the following tuition rates:

2023–24 Third grade (C.M.) annual tuition \$15,302 (R-13 at 130; Tr. 179:9–183:7), per diem \$85

2024-25 Fourth grade (C.M.) annual tuition \$16,192 (R-14 at 146), per diem \$89.96

2023–24 Eighth grade (P.J.M.) annual tuition \$15,570 (R-13 at 130), per diem \$86.50

2024–25 Spotwood High School (P.J.M.) annual tuition \$16,000 (R-14 at 146), per diem \$88.88

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.

AF/ml

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.

September 25, 2025 DATE	ALLISON FRIEDMAN, ALJ
Date Received at Agency:	September 25, 2025
Date E-Mailed to Parties:	

<u>APPENDIX</u>

Witnesses

For petitioners

P.M.

B.M.

For respondent

Dr. Stephanie Brown, Superintendent Milltown District

Exhibits

For petitioners

- P-1 Temporary Certificate of Occupancy dated March 6, 2025
- P-2 Construction contract between petitioners and PMGC dated July 28, 2023— Pet. 2-8
- P-3 Email of March 7, 2025, regarding Temporary Certificate of Occupancy
- P-4 March 13, 2025, petitioners' adjournment request
- P-5 PMGC Invoice dated March 31, 2023—Pet. 11-14
- P-6 Copy of check No. 151 from B.M. to PMGC dated July 27, 2023
- P-7 Copy of check 152 from B.M. to PMGC dated August 1, 2023
- P-8 Copy of check 157 from B.M. to PMGC. dated October 10, 2023
- P-9 Copy of check 158 from B.M. to PMGC dated October 16, 2023
- P-10 Copy of check 160 from B.M. to PMGC dated October 19, 2023
- P-11 Copy of check 163 from B.M. to PMGC dated October 19, 2023
- P-12 Copy of check 165 from B.M. to PMGC dated January 7, 2024
- P-13 Copy of check 168 from B.M. to PMGC dated February 6, 2024
- P-14 Copies of checks 170, 171, and 172 from B.M. to PMGC dated March 27, 2024
- P-15 Residency request follow-up from Brown to Mayor Murray dated May 1, 2024—Pet. 26-27

- P-16 Email thread from Milltown to Carl Schneider concerning P.M. and B.M.—Pet. 28-30
- P-17 N.J.S.A. 18A:38-3—Pet. 31-32
- P-18 N.J.S.A. 18A:7B-12.1—Pet. 33-34
- P-19 Notice of Eligibility BOE hearing August 26, 2024
- P-20 Signed Tuition Agreement dated May 1, 2024
- P-21 Final Notice of Ineligibility dated August 24, 2024—Pet. 37-38
- P-22 Emails between Milltown and P.M. and B.M. dated May 1–3, 2024—Pet. 39-42
- P-23 Tuition Invoice dated May 3, 2024
- P-24 Email thread between Milltown and B.M. from April 24 to 26, 2024—Pet. 44-49
- P-25 March 4, 2024, email containing email conversation dated January 2, 2024, request for residency documents

For respondent

- R-1 P.M. 2015 Kindergarten registration and attachments—Milltown BOE1-4
 Mortgage statement re: 81 Townsend St.—Milltown BOE3
 Utility bill re: 81 Townsend St.—Milltown BOE4
 B.M. driver's license issued 2012—Milltown BOE4
- R-2 2019 Proof of residency and attachments—Milltown BOE5-14
 B.M. driver's license issued 2015—Milltown BOE6
 Homeowner's insurance re: 81 Townsend 2019-20—Milltown BOE7-8
 Recorded deed to 81 Townsend St.—Milltown BOE9-14
- R-3 July 28, 2023, Contract re: 112 Highland St—Milltown BOE15-20
- R-4 October, 2023, Address Change and Attachments—Milltown BOE22-36
 April 30, 2022, Lease re: 66 Clay Street—Milltown BOE25-34
 B.M. driver's license issued 2023—Milltown BOE35
 Utility bill re: 66 Clay Street—Milltown BOE36
- R-5 Correspondence dated April 24, 2024, between Dr. Brown and B.M.— Milltown BOE37-39

R-6 Correspondence dated April 18, 2024, and attachments—Milltown BOE40-

Affidavit of residency dated April 29, 2024—Milltown BOE45

2023-24 Property tax bill re: 112 Highland Dr.—Milltown BOE46

March 18, 2024, Mortgage statement re: 112 Highland Dr.—Milltown BOE47-49

February 13, 2023, Homeowner's insurance re: 112 Highland Dr. —Milltown BOE50-54

April 23, 2024, Bank statement of B.M.—Milltown BOE55-59

April 20, 2024, Bank statement of B.M. and J.P.—Milltown BOE60-66

B.M. driver's license issued 2023—Milltown BOE67-68

January 2, 2024, B.M. change of address—Milltown BOE69

- R-7 Correspondence dated April 24, 2024 between Dr. Brown and P.M.—Milltown BOE71-74
- R-8 May 1, 2024, Notice of Determination of Ineligibility—Milltown BOE75
- R-9 May 1, 2024, Tuition Contract—Milltown BOE76
- R-10 August 27, 2024, Final Notice of Ineligibility—Milltown BOE77-78
- R-11 January and March 2024 correspondence between Carl Schneider and J. Scott Johnkins—Milltown BOE79-81
- R-12 Petition of Appeal and attachments—Milltown BOE82-126
- R-13 Milltown Board of Education minutes from June 26, 2023
- R-14 Milltown Board of Education minutes from June 17, 2024
- R-15 Affidavit of Service August 5, 2024
- R-16 Milltown Public Schools Calendar for 2024–2025 school year
- R-17 Milltown Public Schools Calendar for 2023–2024 school year