

J.L. on behalf of minor child J.L.-C., :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
TOWNSHIP OF EWING, MERCER :
COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the determination of the respondent Board that his daughter, J.L.-C., was not eligible for a free public education in the Ewing Township school district during the 2012-2013 school year. Petitioner contended that J.L.-C. lived with him in Ewing, but went undetected by the school district's surveillance during the fall of 2012 and winter 2013 because she left for early track practice at 5:45 a.m., before surveillance began at 6:15 a.m. The Board alleged that J.L.-C. did not reside at the address provided by petitioner within its school district, and therefore must be residing elsewhere. Further, the Board argued that tuition reimbursement is required for the period of J.L.-C.'s ineligible attendance.

The ALJ found, *inter alia*, that: petitioner admitted that J.L.-C. lived with her grandmother in Trenton from September to December 2012, but thereafter her residency is not clear; the evidence presented regarding the domicile of the petitioner is unclear as he presented letters and leases bearing different Ewing addresses which he purported to live at with his daughter; the Board's surveillance failed to show the child coming from any of the observed addresses to go to school; and petitioner's driver's license bears a Trenton address. Although she found that J.L.-C. may have resided in Ewing during the period in question, the ALJ concluded that the petitioner failed to carry his burden to prove that his daughter is entitled to a free public education in Ewing schools. Accordingly, the ALJ affirmed the Board's determination that J.L.-C. is not domiciled in Ewing Township and ordered that respondent is entitled to reimbursement from the petitioner for tuition for her period of ineligible attendance.

Upon review, the Commissioner concurred with the ALJ's conclusion that the petitioner has failed to sustain his burden of proving that J.L.-C. was entitled to a free public education in Ewing schools. Accordingly, the petition was dismissed and petitioner was ordered to reimburse the school district tuition for the period of J.L.-C.'s ineligible attendance in the amount of \$13,013.36, representing 188 days at a daily tuition rate of \$69.22.

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.

May 19, 2014

OAL DKT. NO. EDU 8903-13
AGENCY DKT. NO. 68-3/13

J.L. on behalf of minor child J.L.-C., :
PETITIONER, : COMMISSIONER OF EDUCATION
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The instant controversy concerns the eligibility of J.L.-C. to receive a free public education in respondent's school district. Upon consideration of the record and Initial Decision of the Office of Administrative Law (OAL), the Commissioner concurs with the finding of the Administrative Law Judge (ALJ) that petitioner failed to show that his daughter, J.L.-C., is so entitled.

First, in most cases, a student is not entitled to a free education in a public school district unless he or she is domiciled in that district. *N.J.S.A. 18A:38-1(a)*. As the ALJ noted, the domicile of a minor child is defined by the domicile of his or her parents or legal custodians. *N.J.A.C. 6A:22-3.1(a)(1)*. Although J.L. is J.L.-C.'s father, he testified that it is J.L.-C.'s maternal grandmother, L.C., who has legal custody of her. Thus, J.L.-C. is domiciled with L.C. in Trenton, where L.C. resides, and is entitled to a free public education in Trenton – not Ewing.

Second, various documents entered into evidence at or after the December 5, 2013 hearing in this matter contain conflicting representations about where petitioner lived during 2011, 2012 and 2013. Petitioner's driver's license shows the Trenton address of L.C. An

affidavit which petitioner provided to respondent when he applied – on August 23, 2012 – to enroll J.L.-C. in respondent’s school district indicated that petitioner and his daughter were living with a family member on R. Avenue in Ewing at that time. (Respondent’s Exhibit R-6) However, both the copy of a lease for 120 West F. Avenue, Ewing, and a copy of a renewal notice for that address appear to indicate that respondent lived at 120 West F. Avenue from February 2011 through at least February 2013. (Petitioner’s Exhibits P-1 and P-2) This raises a question about whether petitioner resided on R. Avenue, F. Avenue or elsewhere in August 2013 when he enrolled J.L.-C. in respondent’s school district.¹

Finally, the copy of the lease for 120 West F. Avenue – which petitioner submitted to the OAL after the hearing (Petitioner’s Exhibit P-1) – conflicted with a copy he had previously given respondent (Respondent’s Exhibit R-4), in that the former indicated that he and his daughter had begun residency at West F. Avenue in February 2011, and the latter indicated that he was the only resident of the apartment. In the Commissioner’s view, the fact that the two lease copies purportedly covered the same time period but contained two different representations about the number of persons residing in the subject apartment, suggests that one or both documents may be tainted.

As the ALJ explained, the individual challenging a district’s determination about the domicile of a student has the burden to show, by a preponderance of the evidence, that the district’s determination was wrong. *N.J.S.A. 18A:38-1(b)(2)*. In the final analysis, petitioner

¹ Further, in a letter from petitioner to the school district, dated January 8, 2013, petitioner asserted that his daughter would soon be moving from 119 R. Avenue, Ewing, to West F. Avenue, Ewing. (Respondent’s Exhibit R-5) That letter does not explain why Petitioner’s Exhibit P-1 shows petitioner and his daughter already living at 120 West F. Avenue in Ewing at a time when he certified, in an affidavit/application to respondent for the enrollment of his daughter, that he and his daughter resided at R. Avenue, Ewing.

was neither able to unambiguously show that J.L.-C. was domiciled with him, nor that he actually resided in respondent's district at the time he applied to enroll his daughter in respondent's schools.

Accordingly, the petition is dismissed and J.L.-C. is disenrolled from respondent's school district. Further, petitioner shall pay to respondent \$13,013.36, the amount of tuition which the ALJ found is due and owing for J.L.-C.'s attendance in respondent's schools while ineligible for a free public education in respondent's district.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 19, 2014

Date of Mailing: May 21, 2014

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