

**ILLINOIS STATE BOARD OF EDUCATION**  
Before Hearing Officer Brian Clauss

In the Matter of the Charges for Dismissal	)	
Preferred Against Tenured Teacher	)	
Derrick Jones,	)	Tenured Teacher Dismissal
	)	
Respondent	)	
	)	
By the Chief Executive Officer of the	)	
Board of Education of the	)	
City of Chicago	)	
Petitioner	)	

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Appearances:

Petitioner:

Edward Wong, Esq.  
Mark Lubus, Esq.  
Chicago Public Schools

Respondent:

Kurtis Hale, Esq.  
Poltrock & Giampietro

Dates of Hearing:

July 16 & 23, 2013

Location of Hearing:

CPS Offices  
125 South Clark Street  
Chicago, IL 60603

## **INTRODUCTION**

The Board issued Charges and Specifications dated September 26, 2011. A dismissal hearing was held on July 16, 2013 and July 25, 2013 at Board offices in Chicago. Each party was given full opportunity to present witnesses and evidence. The hearings were transcribed by a court reporter and the parties submitted written briefs in support of their positions.

The Board issued the following Charges and Specifications dated September 26, 2011, as follows:

**APPROVAL OF DISMISSAL CHARGES AGAINST DERRICK JONES,  
A TENURED TEACHER ASSIGNED TO PERCY L. JULIAN HIGH SCHOOL  
THE CHIEF EXECUTIVE OFFICER**

Hereby approves the following charges against Derrick Jones, a tenured teacher assigned to Percy L. Julian High School.

**DISMISSAL CHARGES**

I charge Derrick Jones with:

1. Violation of Section 3-7 of the Chicago Public Schools' Employee Discipline and Due Process Policy that prohibits the violation of, or failure to perform any duty required by, the Board's Code of Ethics.
2. Violation of Section 4-1 of the Chicago Public Schools' Employee Discipline and Due Process Policy that prohibits repeated or flagrant acts of Group 3 misconduct.
3. Violation of Section 4-6 of the Chicago Public Schools' Employee Discipline and Due Process Policy that prohibits any serious violation of the Chicago Public School's Code of Ethics that may result in direct or indirect financial impropriety, among other things.
4. Violation of Section 4-15 of the Chicago Public Schools' Employee Discipline and Due Process Policy that prohibits submitting false or fraudulent residency information in violation of the Board's residency policy.
5. Violation of Section 4-17 of the Chicago Public Schools' Employee Discipline and Due Process Policy that prohibits forging or falsifying official school or Board documents.
6. Violation of Section 4-21 of the Chicago Public Schools' Employee Discipline and Due Process Policy that prohibits misappropriating any funds of the Board or any other public or private organization.
7. Violation of Section 4-26 of the Chicago Public Schools' Employee Discipline and Due Process Policy that prohibits violating School rules, Board rules, policies or procedures that result in behaviors that seriously disrupt the orderly educational

process in the classroom, in the school, and may occur on or off the school grounds or assigned work location.

8. Violation of Section 5-1 of the Chicago Public Schools' Employee Discipline and Due Process Policy that prohibits repeated or flagrant acts of Group 4 misconduct.
9. Violation of Section 5-15 of the Chicago Public Schools' Employee Discipline and Due Process Policy that prohibits engaging in any act or conduct prohibited by Board Rules, the Municipal Code of the City of Chicago, the Illinois Compiled Statutes, applicable laws of other states, or federal statutes that may be deemed irremediable conduct.
10. Violation of Section 5-17 of the Chicago Public Schools' Employee Discipline and Due Process Policy that prohibits violating schools rules, Board rules, policies or procedures which result in behaviors that grossly disrupt the orderly educational process in the classroom, in the school and may occur on or off the school grounds or assigned work location.
11. From September 1999 to July 2009, you were in violation of former Board Rule 5-17 that prohibits non-resident pupils being admitted to a Chicago Public School without advance payment of tuition and fees.
12. From July 2009 through June 2011, you were in violation of Board Rule 5-12 that prohibits non-resident pupils from attending a Chicago Public School.
13. Violation of Section 105 ILCS 5/10-20.12b of the Illinois School Code that makes it illegal to allow a non-resident pupil to be enrolled in a Chicago Public School without advance payment of tuition and fees.
14. Violation of the Board's *Residency Policy for All Employees of the Board of Education*.
15. Conduct unbecoming a Chicago Public Schools employee.

#### SPECIFICATIONS

1. During all relevant time periods, you have been employed by Chicago Public Schools ("CPS") as a teacher.
2. You were originally hired by CPS system in 1984, but left in 1997.
3. You were rehired as a substitute teacher by the CPS system in 2000 and became a full-time teacher on or about December 15, 2004. Accordingly, you had a break in service which required you to be a resident of the City of Chicago.
- A. Residency Fraud
  4. On or About December 15, 2004, you submitted a CPS Employee Sworn Residency Statement as a condition of your employment.
  5. On the Employee Sworn Residency Statement you represented the following:  
I understand and acknowledge that falsification of my statement or failure to timely notify the Department of Human Resources and my principal/unit of any change of address shall constitute grounds for discharge  
My address is 11734 South Loomis, Chicago, Illinois 60643.

By signing this residency affidavit, I acknowledge and represent that I have fully read and understand this residency policy and further certify that the information that I have provided herein is true and correct.

Signed: Derrick Jones Date: 12/15/2004

5. In fact, on December 15, 2004, you resided at 1003 East 107<sup>th</sup> Place, South Holland, Illinois 60643.
6. Your December 15, 2004, Employee Sworn Residency Statement was materially false.

**B. Tuition Fraud**

7. Between September 1999 and the end of June 2011, your daughter, Desiree resided with you and your wife in South Holland, Illinois. During that same time frame, Desiree continuously attended a CPS school without paying non-resident tuition.
8. Desiree attended James E. McDade Elementary Classical School, a CPS select enrollment school, from September 1999 through June 2005. Desiree then attended Morgan Park High School, a CPS neighborhood school, from September 2005 through June 2011.
9. Between September 2006 and the end of June 2009, your son, David, resided with you and your wife in South Holland, Illinois. During that same time frame, David continuously attended McDade Elementary without paying non-resident tuition.
10. In enrolling Desiree and David in Chicago Public Schools, you intentionally provided false residency information claiming that they resided within the City of Chicago. Your falsification of this residency information began in the 1999-2000 school year and continued through the 2010 -2011 school year.
11. You and your wife are responsible for the applicable non-resident CPS tuition for each of your two children. In total, you and your wife owe, according to the Illinois School Code rate, \$125,385.70 in non-resident CPS tuition.  
Moreover, Desiree and David were ineligible to attend McDade, a selective enrollment school in Chicago, since they were not residents of Chicago at that time.
12. Desiree and David took selective enrollment student eligibility spots from CPS students.

Based on the above specifications dismissal is warranted due to your irremediable conduct. Dismissal may result in your permanent ineligibility for employment with the Chicago Public Schools.

The relevant testimony at the hearings disclosed the following:

Tracy Larson has worked for the Inspector General's Office for the Chicago Board of Education for five years. Ms. Larson assisted Mr. Lloyd in the investigation of charges against

Respondent. She was never actually assigned to the case. Mr. Lloyd has since retired. Ms. Larson's involvement was limited to assisting Mr. Lloyd with the interviews of Respondent and Respondent's wife. She did not interview anyone else or conduct any surveillance.

Prior to the investigation, surveillance indicated that Respondent and his family lived in South Holland, Illinois. During the investigation, Respondent stated that he was living at a Chicago address on Loomis. Investigators informed Respondent that surveillance had been conducted indicating that he was living in South Holland. Ms. Larson testified that Respondent then changed his statement to say that he had been living in South Holland since 1994. Respondent obtained a special needs waiver in 2005 permitting him to live outside the City of Chicago. The waiver lapsed in 2008. Respondent did not know that it had lapsed.

During Ms. Larson's investigation, Respondent stated that his two youngest children had been living in South Holland exclusively between 2004 and the interview. Respondent's daughter started school at Morgan Park High School ("Morgan Park") in seventh grade and was still attending Morgan Park at the time of the interview. She attended McDade Elementary School ("McDade") from first through seventh grades, and Morgan Park from seventh grade until she graduated. Respondent's son attended McDade Elementary School from kindergarten through fifth grades. After fifth grade, he transferred to a South Holland school. Both Morgan Park and McDade are CPS schools.

Respondent's wife was a teacher with CPS. She was not subject to the residency policy because she began working for CPS prior to the effective date of the policy in November 1996. Respondent indicated he believed that his children could attend CPS district because his wife was not subject to the residency policy and he had a waiver to live in the suburbs. Respondent's

waiver had expired at the time of the interview. He was granted a new waiver the day after the interview.

Respondent is a science teacher at Thornton School District 205 in South Holland, Illinois. He is also a pastor of Sunshine Missionary Baptist Church. He worked for CPS from 1994-96, and again in 2001 as a substitute teacher. He returned to CPS as a full-time teacher in 2004. When Respondent returned to CPS in 2004, he filled out his paperwork to reflect that he lived on South Loomis. He testified that the clerk who was working told him to use the address where he was living at the time that he filled out the paperwork.

Respondent testified that he returned to CPS in 2004 because his wife had to have double surgery and they needed the money. They were living at East 170<sup>th</sup> Place in South Holland, but they were staying with Respondent's in-laws on South Loomis in the City of Chicago. Respondent testified that his wife was having difficulty getting up and down the stairs in the South Holland house, so they stayed with her parents until she recovered from her surgery.

Respondent testified that his residency has been investigated three times. The first investigation occurred in November 2005; he was cleared of that violation. He has been cleared of residency violations two out of three times. He obtained a special needs waiver in May 2011 that was granted retroactively to apply from September 1, 2010 until June 20, 2013.

In May 2011, Respondent learned that he and his wife were being charged with tuition fraud. He was interviewed by the Office of the Inspector General on approximately May 27, 2011. At that time, Respondent told the investigator that he had never enrolled any of the children in school. He testified that he was unaware any tuition charges before that point.

Respondent testified that he did not know that he needed to pay tuition for his children because his wife was grandfathered in under the residency policy and he had a special needs

waiver covering his own residency. Respondent testified that he would have paid tuition if CPS had told him that he had to pay tuition in order for his children to attend CPS schools.

He received notice of the children's tuition in May 2012. The notice from the Board alleged that he was liable for \$125,385.70. Respondent testified that no one has contacted him to collect the debt. Respondent did not contact anyone to attempt to pay the debt.

CPS never removed any of Respondent's children from school. Respondent testified that he and his wife did remove their youngest child from CPS schools because it was closer to their home and it was a different environment. The Board of Education has not attempted to collect on the final judgment that was entered against Respondent and his wife. The Board has not abandoned its right to collect on the final judgment.

Kathryn Ellis has been the executive director of the Office of Access and Enrollment for two years. She handles admissions procedures for centralized programs at CPS including magnet and selective enrollment schools. Ms. Ellis identified selective enrollment schools as schools requiring students to test to get in. There are 26 selective enrollment schools in CPS including "magnet schools" which use a lottery-based process for admissions. The selective enrollment schools are those reserved for academically gifted students. Students who attend selective enrollment schools must live in Chicago. Students may apply from outside the district, but they must prove residency by June 1<sup>st</sup> of the year in which they enroll.

Ms. Ellis testified that selective enrollment schools are extremely competitive. Admission is strictly based upon test scores. There are seats reserved for siblings of current attendees, but 45% of reserved seats are strictly for magnet schools.

McDade Elementary School is a selective enrollment school and is not a magnet school. During the timeframe in which Respondent's daughter was enrolled, McDade had at least 1,000

applicants on the waiting list. Approximately 26 were admitted. During the timeframe in which Respondent's son was enrolled, McDade had approximately 1,500 applicants on the waiting list.

Morgan Park is also a selective enrollment school and not a magnet school. During the timeframe in which Respondent's daughter was enrolled, Morgan Park had approximately 600 applicants on the waiting list. Approximately 60 were admitted. Ms. Ellis did not work at CPS at the time when Respondent's children attended CPS; she reviewed historical application volume charts as the basis of her testimony.

Currently, parents of selective enrollment students receive a guide called Options for Knowledge. In 2003, a similar guide was given to parents called Educational Opportunities for Chicago's Children. The 2003 guide lists McDade as a "classical" school requiring testing and having different transportation distance boundaries than some of the other elementary magnet schools. The guide explains the difference between testing and lottery-based schools on Page 27. Residency requirements are not listed in this document. Residency requirements are currently sent out in separate registration materials and procedures. Ms. Ellis testified that she does not know whether these materials were sent to parents in 2003.

Kishasha Williams-Ford has worked for the Board of Education for 20 years in various roles. She has served as the director of student adjudication for nine years. In her position, she sends out notifications and requests for non-residency and expulsion hearings.

When non-residency is determined, the Board sends out notice to the parents informing them that they owe tuition for attending CPS while living outside the city. The finding of non-residency comes from the Inspector General's Office where the investigation occurs. The investigation includes a tentative amount of tuition. The Board sends out the notice to the parent identifying the student(s) and parent(s), as well as informing them of the amount of tuition owed

and their right to a hearing. A hearing must be requested within 10 days of notice. If no hearing is requested, an enforceable final judgment is entered in the full amount claimed in the letter.

Ms. Williams-Ford testified that she sent a notice to Respondent and his wife for their two youngest children on approximately May 10, 2012. Neither Respondent nor his wife requested a hearing. On June 27, 2012, the Board voted on the final determination. In August, the Board sent a letter to Respondent and his wife notifying them of the final determination. It was sent to both the South Holland and Chicago addresses that Respondent provided. According to the tracking document, Respondent's household received the document on August 23, 2012.

James Sullivan has been the Inspector General for the Board of Education for 11 years. He investigates residency issues. In 2006, he prepared and submitted an annual report to the Board.

Thomas Krieger is the Assistant Director in the Office of Employee Engagement at CPS. The office issues decisions on employee grievances and conducts counseling/advising of principals and administrators on employment-related issues.

Mr. Krieger testified that the residency policy requires that teachers live in the City of Chicago unless: they were employed prior to November 1996, possess a "special needs" waiver, or fall into another exemption (e.g., day-to-day substitute teacher). Teachers designated as "special needs" may apply for a residency waiver which typically lasts for three years. If there is no change to the teacher's designation, he can reapply for a new waiver for three additional years.

Mr. Krieger testified that his office conducted a residency audit in January 2010 prior to selecting people for layoffs. During the audit, Mr. Krieger discovered teachers who had non-Chicago addresses and had always worked in special needs positions. He gave those individuals the opportunity to acquire special needs waivers so that they could keep their jobs. Respondent acquired a special needs waiver that was valid through 2013.

Charlotte Jones worked for CPS for more than 29 years, most of which she spent teaching at McDade. She has been married to Respondent for 33 years. She lives in South Holland and has lived there since 1994. She also lived in a house owned by her parents on Loomis in Chicago on and off for her entire life. She lived there after college, after she had each of her children by cesarean in 1982, 1986, 1993, and 1994. She also lived there after she had a surgical hernia repair and hysterectomy from December 2004 through March 2005. Ms. Jones' mother and father, Respondent, and her three youngest children lived at the house with her at that time.

Ms. Jones testified that her eldest child attended McDade from kindergarten through fourth grade before transferring to a different CPS school. Her second oldest child attended McDade for a year before transferring to several others in South Holland. When her second oldest began attending McDade, she was living with her family on South Longwood Drive in the City of Chicago. Her youngest daughter attended McDade from first through sixth grade and then Morgan Park through graduation. Her youngest son attended McDade from kindergarten through fifth grade.

Ms. Jones personally enrolled her children in school. Respondent was not involved in the children's enrollment. Ms. Jones testified that she did not pay tuition for her children because she had been grandfathered into the residency policy, and by extension, she believed that her children were also covered. She was never questioned or informed about a need to pay tuition. Ms. Jones was terminated from CPS because of the residency and tuition fraud issues. She is currently challenging her termination.

Ora Smith is Respondent's mother-in-law and maternal grandmother to his four children. She lives on Loomis in the City of Chicago. Ms. Smith testified that Respondent and his wife lived with her on Loomis in 2004. They moved in because her daughter needed help after she

had surgery. They did not permanently reside there and moved back to South Holland after the recovery.

## RELEVANT STATUTES, POLICIES AND RESOLUTIONS

105 ILCS 5/34

The relevant statutory language appears in section 34-85 which reads in part:

**Sec. 34-85.** Before setting a hearing on charges stemming from causes that are considered remediable, a board must give the teacher reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges... No written warning shall be required for conduct on the part of a teacher or principal that is cruel, immoral, negligent, or criminal or that in any way causes psychological or physical harm or injury to a student, as that conduct is deemed to be irreparable.

105 ILCS 5/10-20.12b. Residency; payment of tuition; hearing; criminal penalty.

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(b) Except as otherwise provided under Section 10-22.5a, only resident pupils of a school district may attend the schools of the district without payment of the tuition required to be charged under Section 10-20.12a. [...]

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If a hearing is requested under subsection (c) or (c-5) to review the determination of the school board or board of education that a nonresident pupil is attending the schools of the district without payment of the tuition required to be charged under Section 10- 20.12a, the pupil may, at the request of a person who enrolled the pupil, continue attendance at the schools of the district pending a final decision of the board following the hearing. However, attendance of that pupil in the schools of the district as authorized by this subsection (d) shall not relieve any person who enrolled the pupil of the obligation to pay the tuition charged for that attendance under Section 10-20.12a if the final decision of the board is that the pupil is a nonresident of the district. If a pupil is determined to be a nonresident of the district for whom tuition is required to be charged pursuant to this Section, the board shall refuse to permit the pupil to continue attending the schools of the district unless the required tuition is paid for the pupil.

Except for a pupil referred to in subsection (b) of Section 10-22.5a, a pupil referred to in Section 10-20.12a, or a pupil referred to in subsection (b) of this Section, a person who knowingly enrolls or attempts to enroll in the schools of a school district on a tuition free basis a pupil known by that person to be a nonresident of the district shall be guilty of a Class C misdemeanor.

A person who knowingly or willfully presents to any school district any false information regarding the residency of a pupil for the purpose of enabling that pupil to attend any school in that district without the payment of a nonresident tuition charge shall be guilty of a Class C misdemeanor.

\*\*\*\*\* (Jt. Ex. 6).

### Relevant Board Policies

#### A. Employee Discipline and Due Process Policy (Jt. Exs 2(a) & (b)).

**Staleness** - If the Board does not take disciplinary action against an employee within a reasonable time after it knew or should have known of an alleged rule infraction, then the Board will have waived its right to do so. An unreasonable delay shall mean a period of time that renders it difficult or impossible to ascertain the truth of the matters in controversy or as to create a presumption that the conduct at issue was condoned by the Board. The date a final investigative report is served on the Board is the date the Board is presumed to have knowledge of the rule infraction. (Jt. Ex. 2(b), pgs. 4-5).

#### 1999 Rules of the Board of Education of the City of Chicago (Jt. Ex. 3)

Sec. 5-17. Non-Resident Pupils – Tuition. Pupils who live outside of Chicago and all pupils whose parents do not reside within the limits of the City of Chicago and who are staying in Chicago for the primary purpose of attending Chicago Public Schools shall be considered non-resident pupils and shall be admitted to the Chicago Public Schools only upon payment in advance to the Department of Accounting and Control such non-resident tuition fees as may be fixed from time to time by the Board of Education. Non-resident pupils may not attend the Chicago Public Schools “magnet program”, “regional gifted centers,” “community academies,” “specialty schools,” “international baccalaureate preparatory programs,” or “international baccalaureate programs.”

Non-resident parents of such pupils staying in Chicago shall be required to fill out and sign a questionnaire sufficient in detail to enable the General Superintendent of Schools to make a decision as to whether or not such pupils are staying in Chicago for the primary purpose of attending Chicago Public Schools.

#### 2005 Rules of the Board of Education of the City of Chicago (Jt. Ex. 4)

Pupils who live outside of Chicago and all pupils whose parents do not reside within the limits of the City of Chicago and who are staying in Chicago for the primary purpose of attending Chicago Public Schools shall be considered non-resident pupils and shall be admitted to the Chicago Public Schools only upon payment in advance to the Department of Accounting and Control such non-resident tuition fees as may be fixed from time to time by the Board of Education. Pupils who become non-resident during a school term shall not be charged tuition for the remainder of the school term in which they become non-resident pupils. Non-resident pupils may not attend the Chicago Public Schools “magnet program”, “regional gifted centers,” “community academies,” “specialty schools,” “international baccalaureate preparatory programs,” or “international baccalaureate programs.”

Non-resident parents of such pupils staying in Chicago shall be required to fill out and sign a questionnaire sufficient in detail to enable the General Superintendent of Schools to make a decision as to whether or not such pupils are staying in Chicago for the primary purpose of attending Chicago Public Schools.

2011 Rules of the Board of Education of the City of Chicago (Jt. Ex. 5)

Sec. 5-12. Non-Resident Pupils – Tuition. Pupils must reside within the limits of the City of Chicago to attend a Chicago Public School. For purposes of enrolling or completing enrollment in an Option for Knowledge school or program, a student must establish Chicago residency on or before July 1st prior to the start of the upcoming school year.

Pupils whose parent(s) or legal guardian(s) do not reside within the limits of the City of Chicago and who are staying in Chicago for the primary purpose of attending Chicago Public Schools shall be considered non-resident pupils. The parent or legal guardian of a non-resident pupil determined to be in violation of this residency requirement shall be charged tuition as determined by the District’s Department of Revenue, in accordance with the Illinois School Code and the student is subject to transfer. Pupils who become non-resident during a school term shall not be charged tuition for the remainder of the school term in which they become non-resident pupils.

Residency Policies (Jt. Exs. 7(a) & (b))

CPS Special Needs Policy (Resp. Ex. 6)

Admissions Policy for Magnet, Selective Enrollment and Other Options for Knowledge Schools and Programs (Jt. Ex. 8).

Comprehensive Policy Regarding the Framework for Magnet Schools and Programs of the Chicago Public Schools (Jt. Ex. 9).

Continuation and Exit Criteria

As a general rule, once a student is admitted to a magnet school or program, the student shall have the right to remain in the school or program until the student reaches the highest grade level offered by that school. [...]

## **POSITIONS OF THE PARTIES**

### ***The Board***

The Board maintains that a tenured teacher may be discharged, according to Younge v Board of Education, if the conduct is “cruel, immoral, negligent, or criminal or which in any way causes psychological or physical harm or injury to a student.”

The Board continues that Respondent falsified his December 15, 2004 employment application by listing a Chicago address despite owning his South Holland home since 1994.

However, he listed his South Holland address when requesting a special needs residency waiver on the following day, thereby indicating that he understood the residency policy. He failed to renew his waiver for two years and thereby violated the residency policy.

The Board continues that Respondent committed the violation by intending to enroll his children in CPS and knowingly failing to pay tuition. There is no need to prove that Respondent's actions were willful in order to prove the violation. Respondent's actions with his wife were shown by his statement that they make important decisions together. A decision on where to enroll the children was made by Respondent and his wife.

The Board continues on page 14 of the submission that "The fact that [respondent] might not be the one to actually enroll the children is irrelevant." Further, Respondent and his wife acted together in misrepresentation to the Board and they consistently misrepresented the residence of the children.

The Board continues that Respondent did not contest the tuition bill that the Board is pursuing against him and his wife. By not contesting the bill, Respondent has accepted the determination that he violated the student residency policy by registering his children for CPS schools.

The Board further argues that Respondent's conduct was irremediable per se because it was immoral. By putting the improper address on his employment application, he lied to his employer and that lie was immoral. Although Respondent testified that he thought his waiver or his wife's grandfathered position allowed the children to attend CPS school, that cannot be believed because a person is presumed to know the law. Further, Respondent is an educated professional and that status underscores the presumption that he knew the law.

Respondent's conduct in enrolling his children in CPS was irremediable per se because it was immoral. However, even if the Gilliland analysis is applied, the Board has still proved conduct that warrants Respondent's termination. Respondent's conduct caused financial harm to CPS and it went on for a period of years. The Board cites the deliberate and long-running nature of the misconduct as particularly egregious.

### ***The Respondent***

Respondent argues that the Board has not met the burden of proof in the instant matter. First, the Board has not proven residency fraud that warrants dismissal because only Specifications 4 and 5 have been proven and Specification 6 and 7 have not. Specifications 6 and 7 have not been proven because there is no evidence that Respondent did not live in Chicago at the time he submitted the Residency Statement. All the Board has proven is that Respondent moved to South Holland in violation of the residency policy – a charge not included in the Specification and therefore excluded from consideration.

Further, collateral estoppel and staleness should bar the instant Board action. Respondent's residency was investigated on two prior occasions by the OIG and Labor and Employee Relations. Both investigations were closed because Respondent obtained a special needs waiver. At the time of the charges, Respondent had a valid special needs waiver through June 2013.

Respondent continues that the Board has not proven that Respondent engaged in tuition fraud. Although the Board has proved Specifications 8, 9, 10, 12, 13 and 14, it has not proven Specification 11 - the key specification. The Board did not show that Respondent registered his children at a CPS school. To the contrary, Respondent's wife enrolled the children and her

termination was upheld by the courts. Respondent denied registering the children and stated that his wife took care of registrations.

Respondent further argues that there is no irremediable cause for termination – either through the per se analysis of *Younge* or the *Gilliland* test. 105 ILCS 5/10-20.12b of the School Code codifies the misdemeanor offense of falsely registering an out-of-district student. The Board has not proven that Respondent committed the offense and therefore his conduct is not irremediable under either analysis. Per se conduct is cruel, immoral, negligent, criminal or causes psychological or physical harm to a student. Respondent’s conduct was none of these.

Respondent also argues that the *Ahmad* analysis for immoral conduct does not apply. In *Ahmad v. Board of Education*, the appellate court defined immoral conduct as that which is shameless indicative of a moral indifference to the opinion of good and respectable members of the community. The respondent in *Ahmad* fraudulently represented herself as a CPS agent in order to obtain merchandise that she diverted to her private business. The appellate court found this conduct to be immoral. Unlike *Ahmad*, there was no intent by Respondent to defraud CPS. Moreover, Respondent’s conduct was not per se irremediable because conduct unbecoming is not per se irremediable.

The *Gilliland* test is not met in the instant matter. The Gilliland analysis requires proof that the teacher’s actions caused damage to the school, faculty or students and a warning would not have corrected the behavior. Damage cannot be presumed.

Respondent also argues that there has been not proof that Respondent violated the Code of Ethics. There is no proof that a Code of Ethics exists and accordingly there can be no proof that Respondent violated it.

## ANALYSIS

### *Residency*

The Board maintains that Respondent filed a false application because he used a Chicago address, despite living in South Holland. Respondent counters that the residency issue was the subject of two separate investigations and that Respondent was cleared. He received a special needs residency waiver and it was valid through end of the 2012-2013 school year. Respondent continues that if there was any problem with the address on the application, the Board knew about it due to the investigation yet did not act upon it. That delay should bar the instant charges.

Respondent filed an application with a Chicago address and applied for a special needs waiver using the South Holland address. He was living in South Holland at the time he applied for the job and when he applied for the waiver. The Chicago address was not an address at which he ever permanently resided. It was, and continues to be, the address of his in-laws. The testimony indicated that the time spent living at his mother-in-laws during his wife's recovery from childbirth and surgery was part of a temporary arrangement. The family never permanently relocated from South Holland to Chicago from 1994 to the present.

The employment application and the waiver application support the Board's argument that Respondent was aware of the residency requirement. There is evidence in the record that Respondent was not forthright in his application that listed a Chicago address.

Respondent's collateral estoppel and staleness defenses appear to have some merit. The pertinent part of the Employee Discipline and Due Process Policy provides that delay can bar disciplinary action. According to the policy, "[a]n unreasonable delay shall mean a period of time that renders it difficult or impossible to ascertain the truth of the matters in controversy or

as to create a presumption that the conduct at issue was condoned by the Board.” The policy discusses notice of an infraction as “The date a final investigative report is served on the Board is the date the Board is presumed to have knowledge of the rule infraction.” (Jt. Ex. 2(b), pgs. 4-5). According to Mr. Krieger, his office conducted a residency audit in January 2010 prior to selecting people for layoffs. During the audit, Mr. Krieger discovered teachers who had non-Chicago addresses and had always worked in special needs positions. He gave those individuals the opportunity to acquire special needs waivers so that they could keep their jobs. Respondent acquired a special needs waiver that was valid through 2013.

As Mr. Krieger testified, Respondent obtained a special needs waiver that allowed him to reside in South Holland but teach at CPS. The Board cannot examine misconduct, clear the employee of misconduct, and later use that same misconduct as the basis for discipline. However, the defense is ultimately unimportant because the tuition fraud Specifications remain. As discussed below, there is no valid defense to the tuition fraud specifications.

### ***Tuition Fraud***

Respondent agrees that there is no dispute about whether the Board had proved all the tuition-related Specifications - except for number 11. Even if Respondent did not agree, the evidence is uncontested and overwhelmingly supports the allegations contained in the Specifications, exclusive of number 11, that:

- Respondent, his wife, and their children lived in South Holland, Illinois.
- The children were not residents of Chicago.
- The children attended CPS (McDade and Morgan Park) for 12 years.
- The children were not eligible to attend the CPS schools.
- The cost of that education, pursuant to the School Code, is \$125,385.70 in non-

resident CPS tuition.

Further, although not in the specifications, it is also uncontested that:

- Respondent's wife was a CPS teacher at McDade Elementary.
- Respondent's children attended McDade Elementary.
- Respondent's wife was grandfathered into the residency requirement and could live outside Chicago.
- There is no CPS policy that allows non-resident children of residency grandfathered teachers to attend CPS schools.

Specification 11 is the only one at issue for analysis of the tuition-based allegation.

Specification 11 provides:

In enrolling Desiree and David in Chicago Public Schools, you intentionally provided false residency information claiming that they resided within the City of Chicago. Your falsification of this residency information began in the 1999-2000 school year and continued through the 2010 -2011 school year.

Respondent's defense is built around his claim that he thought the children were allowed to attend CPS because his wife was grandfathered into the residency requirement, and, if they were not entitled, his wife enrolled the children without his involvement. According to Respondent, there is no proof that he registered the children using the Chicago address or that he knew that they were not exempt from Chicago residency.

*Exemption From Chicago Residency Requirements.*

Respondent claims that he thought the children were allowed to live outside Chicago yet attend a CPS selective enrollment school. Put another way, Respondent contends that he did not know that his children had to live in Chicago in order to attend a CPS school. As the Appellate Court noted in the appeal of Respondent's wife's termination, it is unimaginable that a public school teacher does not know that a student must be a resident of the school district in order to

attend school in that district<sup>1</sup>. Not only is it common knowledge, but also it can be safely presumed, as the Appellate Court noted, that intelligent educators understand the requirements of school district residency.

Further, support for the theory that Respondent understood the requirements of Chicago residency is shown on his application. Respondent listed a Chicago address on his initial application and a South Holland address on his special needs waiver – underscoring that he understood the nature of the Chicago residency requirement for employment. It is too far a stretch in logic to conclude that Respondent knew the residency requirement for employment but did not know the requirements for attendance. Examination of the Chicago address on the application indicates that it was the same address that had been used to register the children for the five years preceding his application. This was part of the fraudulent registration scheme - had the Board checked his employment application against his children’s school registration, they would have conformed and no questions would have followed.

Finally, even if Respondent did not immediately understand that his children needed to be Chicago residents when a child was enrolled in 1999, at some point in the 12 years that they attended CPS, he would have known. He cannot claim to not know what is common knowledge - that children are entitled to a free public education in the district in which they reside.

Respondent’s argument that he did not know that his children had to be Chicago residents is, at best, disingenuous. To accept his contention would allow him to assert that he did not know a fundamental principle of public education. Accordingly, Respondent’s contention is rejected.

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<sup>1</sup> Jones v. Board of Education of the City of Chicago, \_\_\_ Ill App.3d\_\_\_, (1<sup>st</sup> Dist 2013)(2013 Ill App (1<sup>st</sup>) 122437).

*Whether Respondent Registered the Children in CPS.*

Also rejected is Respondent's claim that this wife did the registering for the children and he did not take part in it. While he might not have been at the school to do the physical act of registering the children at the CPS school, it is not dispositive because Respondent was certainly part of the initial decision to enroll them in a CPS school as well as the decision to keep them in a CPS school. Moreover, he did certain acts in furtherance of the plan to send the children to CPS in violation of the residency policy. His initial Board application in 2004 listed his in-laws address in Chicago and not his South Holland address. This initial misrepresentation to the Board indicates Respondent understood that residency was important for CPS employment. This also supports the theory that Respondent intended to deceive CPS from the moment he started employment regarding his residence – and to continue the deception that had begun when his child was registered in 1999. He subsequently applied for a special needs waiver – further underscoring his knowledge of the residency requirements of CPS.

Additional support for Claimant's culpability is found in his initial statement to OIG Investigators Floyd and Larson discussed at pages 14 – 19 of the record. Respondent's first claim of residency was the Chicago residence. A position that became untenable during the interview when the investigators produced documentation of the South Holland residence. If Respondent thought his wife's grandfathered suburban address and his special needs waiver allowed his children to attend CPS, then there was no need to lie to the OIG investigators. His initial lie undercuts his current later contentions.

Respondent's argument, that he did not know what his wife was doing, must be rejected. To accept that argument would allow Respondent to turn a supposedly blind eye to the 12 years his children improperly attended CPS while not Chicago residents. As discussed above,

ignorance of his wife's actions is an invalid defense where he had 12 years of exposure to the fraud. It is impossible to believe that he was unaware of the residency requirement and never questioned his wife. Rather, the evidence points to the opposite conclusion where Respondent's falsified address support the Board's theory that he was deceptive *ab initio*.

It should be noted that the testimony of Respondent's mother-in-law does not support Respondent's position. A nice woman who clearly loves her son-in-law, her testimony did not give anything more than a general time frame when Respondent and his family were temporarily living at her home during her daughter's recovery from childbirth and surgery. To the contrary, her testimony and Respondent's testimony clearly showed that the family's presence at the Chicago address was temporary and lasted only a few months. A child was first registered to the Chicago address in 1999 and Respondent applied for a teaching position in 2004. Respondent had not moved from South Holland at either time.

There is no evidence that Respondent or his wife sold, rented or vacated the South Holland home, or switched their identification, vehicle registration, insurance, or other legal documents to reflect the Chicago address. On several occasions they temporarily lived with Respondent's in-laws in Chicago and subsequently returned to their South Holland home. It was improper to list the Chicago address on CPS employment and enrollment documents because it was not a permanent address. It was part of Respondent and his wife's plan to submit falsified documents to CPS.

As a whole, the evidence shows that, at worst, Respondent was a willing participant in a scheme to fraudulently register the children in CPS; at best, he willingly acquiesced to his wife's fraudulent conduct. Neither absolves him of responsibility for the fraud. As discussed below, both types of conduct are immoral and therefore per se irremediable.

The evidence indicates that Respondent was a participant in the plan to enroll the children in CPS selective enrollment schools either through conduct in furtherance of the fraud or acquiescence to the fraud. His claimed ignorance of: 1) the residency requirement for students; and 2) his wife's actions, is rejected. The evidence establishes that Respondent was a willing participant in the fraudulent plan to enroll the children in CPS in violation of the residency requirement.

*Whether Respondent's Conduct Warrants Dismissal.*

A teacher can be dismissed if the conduct is irremediable. Under Younge v Board of Education of the City of Chicago, 338 Ill.App.3d 522 (1<sup>st</sup> Dist 2003), conduct is irremediable if it is, among other things, criminal or immoral conduct. Not only is a warning notice unnecessary if conduct is per se irremediable, but also there is no requirement that the school district prove damage to a student, faculty or schools. Here, the question is whether enrolling non-resident children in CPS selective enrollment schools by using a fictitious Chicago address is immoral or criminal.<sup>2</sup>

Immoral conduct includes misrepresenting one's status to redirect assets from the Board's mission. Jones v Board of Education, citing Ahmad v. Board of Education of the City of Chicago, 365 Ill. App. 3d 155 (1<sup>st</sup> Dist 2006) Here, the evidence establishes that Respondent was part of a scheme to enroll his children in CPS schools. The scheme went on for over a decade and Respondent's children received a substantial amount of education to which they were not entitled. The lengthy scheme diverted over \$125,000 in education from two Chicago residents who were entitled to that education – thereby redirecting assets from the Board's mission of education Chicago residents. It is immoral behavior and is therefore per se irremediable under Younge.

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<sup>2</sup> The Appellate Court addressed a similar issue in Jones v. Board of Education of the City of Chicago cited in FN. 1.

Further, even if this conduct was not per se irremediable, it would still warrant termination under the Gilliland standard. Respondent's participation in the tuition fraud scheme began in either 1999 when a child was registered or 2004 when he rejoined CPS using a false address. Regardless, the fraudulent scheme went on for years. It is impossible to imagine how a warning would have corrected the falsification of the residency documents over so many years.

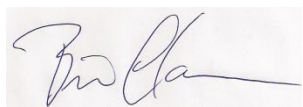
Quantifying the damage to the legitimate CPS students who were competing for those two spots may be impossible. However, the School Code does provide a formula for calculating the cost of that education – and that cost provides a minimum measure of the damage caused by the conduct. That education cost over \$125,000 - an amount that CPS is seeking to collect from Respondent and his wife. While not a perfect calculation, that figure does provide a minimum, calculable assessment of the damage to CPS caused by Respondent's conduct.

The evidence established conduct that was immoral. The evidence also established conduct that could not have been corrected by a warning resolution and that caused a significant amount of financial loss to CPS.

### CONCLUSION

As a whole, the evidence shows that Respondent was a willing participant in a scheme to fraudulently register his children in CPS, despite being residents of South Holland, Illinois. The conduct is per se irremediable. Even if it were not per se irremediable, it could not have been resolved with a warning resolution and caused over \$125,000 in damage to CPS.

The evidence warrants Respondent's termination.



Brian Clauss  
Hearing Officer  
December 30, 2013