

T.K., ON BEHALF OF MINOR CHILD, B.K., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF HOWELL, MONMOUTH COUNTY, :
 RESPONDENT. :
 _____ :

SYNOPSIS

Pro-se petitioner appealed the determination of the respondent Board that her child was ineligible for a free public education in respondent’s school district. Petitioner enrolled her child in the Board’s school district in 2014 using the Howell Township mailing address of the property that the family owns. Petitioner was unaware of any problem with her child’s school registration until the family received a phone call two and a half years later from the Board, advising them that B.K. was enrolled in the wrong school district. The Board filed a counterclaim for tuition for the period of B.K.’s ineligible attendance.

The ALJ found, *inter alia*, that: based on the documentary and testimonial evidence presented, the petitioner is domiciled in Brick Township, which has its own school district; B.K. was enrolled in Howell Township schools for the entirety of the 2014-2015, 2015-2016, and 2016-2017 school years; petitioner provided the correct address of her property when enrolling B.K., and the school district accepted B.K.’s enrollment; the Board became aware of this issue when a neighbor of the petitioner attempted to register their child in Howell Township Schools, after which petitioner was notified by letter dated December 9, 2016 that B.K. was not eligible to attend Howell Township schools. The ALJ concluded that T.K. is domiciled in Brick Township and therefore B.K. is not entitled to a free public education in Howell Township. However, the ALJ concluded that an equitable determination is appropriate in this case, and assessed tuition only for the period after December 9, 2016, when petitioner received notice of the residency error. Accordingly, the ALJ ordered that petitioner reimburse the Board for tuition in the amount of \$7,582 for the period of unauthorized attendance in Howell Township schools.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, but found that the present record lacks the information required to properly calculate the amount of tuition owed to the school district – specifically the number of days of ineligible attendance by the minor child. Accordingly, the matter was remanded to the OAL for calculation of tuition due to the Board.

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.

OAL DKT. NO. EDU 00360-17
AGENCY DKT. NO. 317-12/16

T.K., ON BEHALF OF MINOR CHILD, B.K., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF HOWELL, MONMOUTH COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the Board.¹ The petitioner did not file a reply thereto.

In its exceptions, the Board disputes the Administrative Law Judge’s (ALJ) determination regarding the amount of tuition owed to the Board by petitioner. The Board argues that it is owed more than \$7,582.00 because B.K. is not an “affidavit” student, and thus, the one-year limit on tuition reimbursement set forth in *N.J.A.C.* 6A:22-6.2 does not apply.² Further, the Board argues that the ALJ improperly held that tuition is not owed prior to December 9, 2016, the date when petitioner became aware that even though her mailing address said Howell Township, she actually lived in Brick Township. The Board maintains that the error

¹ The Commissioner was not provided with a transcript of the July 19, 2017 hearing at the OAL.

² It is unnecessary to reach this argument as the ALJ limited the tuition reimbursement to December 9, 2016 – the date that T.K. was informed that the minor child was ineligible to attend school in the District. Nevertheless, the Commissioner notes that *N.J.A.C.* 6A:22-6.2 does not only apply to “affidavit” students. The regulation permits the Commissioner to assess tuition for the period that a residency appeal is 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.A.C.* 6A:22-6.2. Notably, this regulation applies when an appeal is filed by a “parent, guardian, adult student or a school district resident keeping an ‘affidavit’ student.” *N.J.A.C.* 6A:22-6.2. As this appeal was filed by B.K.’s parent, the limitations of this regulation would otherwise apply.

was petitioner's, as she paid taxes in Brick Township and failed to disclose to the District in the enrollment packet that her mailing address and actual address were different. As such, the Board urges the Commissioner to assess tuition for each day of the minor child's ineligible enrollment for the 2014-2015, 2015-2016, and 2016-2017 school years.

Upon review, the Commissioner concurs with the ALJ's finding that petitioner failed to sustain her burden of establishing that she was a domiciliary of Howell Township for the 2014-2015, 2015-2016, and 2016-2017 school years. The Commissioner further concurs with the ALJ's conclusion that the minor child was, therefore, not entitled to a free public education in the District's schools during this 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 child was ineligible to attend school in Howell Township. Here, the Commissioner agrees with the ALJ that, because petitioner only became aware by way of a letter dated December 9, 2016 that her home was in Brick Township rather than Howell Township – and that the District was partially at fault for the minor child's acceptance into the District – the Board is only entitled to reimbursement from December 9, 2016 to the end of the 2016-2017 school year.

The Commissioner does not find the Board's exceptions to be persuasive. The Commissioner agrees with the ALJ that part of the error in admitting B.K. to Howell Township's schools was the Board's fault. T.K. did not give a false address on her enrollment form, and the District did not realize that it admitted a child who lived outside the District. *N.J.A.C.* 6A:22-6.3(b) allows the Commissioner to make an equitable determination regarding whether tuition should be assessed, and "[i]n making the determination, the district board of education or Commissioner shall consider whether the ineligible attendance was due to a school district's

error.” As such, the Commissioner agrees with the ALJ that an equitable determination was warranted in this case.

The ALJ ordered that petitioner reimburse the Board in the amount of \$84.24 per day from December 9, 2016 to the end of the 2016-2017 school year. However, the present record lacks information required to calculate the amount of tuition owed to the District – specifically, the number of days of ineligible attendance by the minor child. The ALJ estimated the number of days of ineligible attendance at “about one-half” of the school year, but an accurate count of the number of ineligible days from December 9, 2016 to the end of the 2016-2017 school year is necessary in order to calculate the exact amount of tuition owed to the Board.

Accordingly, this matter is remanded to the OAL for calculation of tuition due to the District and supplementation of the record as warranted.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: October 23, 2017

Date of Mailing: October 25, 2017



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 00360-17

AGENCY REF. NO. 317-12/16

T.K., ON BEHALF OF MINOR CHILD, B.K.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF HOWELL, MONMOUTH COUNTY,**

Respondent.

T.K., on behalf of minor child, **B.K.**, petitioner, pro se

Jan L. Wouters, Esq., for respondent (Bathgate, Wegener & Wolf, PC, attorneys)

Record Closed: July 19, 2017

Decided: September 8, 2017

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE

Petitioner, T.K., on behalf of minor child, B.K., appeals the residency determination, and tuition due associated with same, of the respondent, Board of Education of the Township of Howell, Monmouth County (Board), disallowing their minor child, B.K., from attending public school within the respondent's school District. The Board seeks to remove B.K. from its schools pursuant to N.J.S.A. 18A:38-1(b)(2), and demands tuition reimbursement.

PROCEDURAL HISTORY

Petitioner, T.K., on behalf of minor child, B.K., filed a pro se residency appeal with the Department of Education, Bureau of Controversies and Disputes, appealing respondent's determination that B.K. did not reside in the District, and in fact lived in Brick Township, New Jersey. On January 4, 2017, the Board filed an answer. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on January 10, 2017, for determination as a contested case pursuant to N.J.A.C. 6A:3-1 et seq. and N.J.S.A. 52:14B-1 to -15. A hearing was held on July 19, 2017, and the record closed. An order of extension was entered to extend the time for filing the initial decision in this matter.

FACTUAL DISCUSSION AND FINDINGS

Ronald Sanasac (Sanasac), Assistant Superintendent for Business, Administration/ Board Secretary, testified on behalf of the respondent. He stated that he oversees enrollment for the District, and identified and reviewed the Howell Township Board of Education's policy regarding eligibility for attendance at the Howell Township schools (P-1). Sanasac noted that the policy must be followed in determining if a student is eligible to attend. He advised that the policy provided admittance to all eligible students who were domiciled within the District as defined by the regulation. He noted that a student must reside in Howell Township, pursuant to N.J.A.C. 6A: 22-3.1. If a student is domiciled within the District, they may attend. Sanasac testified that if a student is located within two or more school districts, they attend the municipality to which the majority of their property tax is paid.

Sanasac also reviewed a deed for the property owned by B.K.'s parents (P-3), dated October 26, 2009, which notes that the municipality in which the petitioner's house exists is Brick Township, New Jersey. The property is on Bayberry Court, with a Howell Township mailing address, but a physical location of Brick Township, and Sanasac noted that this is not an uncommon situation.

Sanasac noted that the petitioner was enrolled in the school district in 2014. At that time, the District had a decentralized process by which registration and enrollment was performed at the school. Parents would go to the neighborhood school, register their children, and it was at that location where they would complete the enrollment packet. Sanasac

indicated that the system has changed, and that the enrollment process is now centralized in the administrative building. Software has been upgraded, and families go to the Administration building to finalize their packet.

Sanasac then reviewed a student enrollment packet that was completed for the petitioner (P-4), and identified Bayberry Court in Howell Township as the address. He noted that the packet has a mailing address field which was left blank. He also noted that the packet included an affidavit which is signed by the parent. In that affidavit it is stated that the parent acknowledges, and understands, that the child must be domiciled in Howell Township. It was noted that the affidavit was signed by B.K.'s mother on January 24, 2014. The affidavit also states that the signer acknowledges that if they make willfully false statements, they are subject to criminal penalties and back tuition. Sanasac also noted the District of Howell Township does not have a private parent-pay tuition program.

Sanasac described that when another resident recently presented themselves for central registration, they came up as residing in Brick Township. That family indicated that their neighbor had a child enrolled in Howell Township. At that point, the District checked the registration, and discovered the mistake that B.K. had been attending Howell Township schools while residing in Brick Township. The district notified the family, told the parents that they needed to disenroll B.K., and that if they did not, they would be responsible for tuition retroactive to September 2014, which included three school years, and a total amount of \$44,433. In presenting his calculation, Sanasac referred to a statement that had been completed by the Board (P-5).

Sanasac stated that he believes that B.K. is not entitled to attend Howell Township schools because he is domiciled in Brick Township, a different town, in a different county than Howell Township.

On cross-examination, Sanasac noted that Bayberry Road does have addresses that do reside within the borders of Howell Township, and are eligible for attendance. He stated that the District had relied on the affidavit, and the truthfulness of the parent completing it.

Sanasac noted that on December 9, 2016, they sent notification to the parents, along with instructions for how to conduct an appeal. The District provided an opportunity for the parents to appeal, the parents appealed, and the Board of Education made its determination.

B.K.'s father J.K. testified on his behalf. J.K. stated that three years ago it was time to enroll their son in school. He did not know, and was not familiar with the District, and noted that they have a Howell Township mailing address. J.K. searched on the internet to determine that the Greenville School was the appropriate school in Howell Township. They went to register, provided the correct address and the District told him that they were in the right spot. J.K. stressed that the parents did not lie, and noted that his wife completed the packet. He stated that it is possible that they did not review all the fine print and made a mistake.

Two and one-half years later, B.K. was in the second grade, and they received a telephone call from the Board advising that they were in the wrong district. He noted that B.K. has an Individualized Education Program (IEP), and they did not want to change schools mid-year. However, the Board told J.K. that if they did not change schools by the following week, they would be charged for tuition. The parents asked if they could finish out the year, but were told no, at which time they decided to appeal the determination. They stated that they do know people who live in one school district, but send their children to schools in another district. They believe that they should not have to pay tuition because in this instance, it was also Howell Township Board's mistake.

Petitioner's mother, T.K., also testified. She stated that they did research on a website which identified the school they believed B.K. should attend. T.K. stated that they are a "by-the-book" family, and they do not want to fight the law. They understand where they live, but also note that their son has been in this District for three years, and has numerous friends. T.K. advised that they are selling their house so they can move into Howell Township to remain in the District, and are currently under attorney review for a pending sale. T.K. just wants her son to continue in the school where he has been. She believes that the District made a mistake as well in this matter, and does not understand why they should have to pay.

T.K. noted that the Board has been difficult to deal with, with the exception of Mr. Sanasac, who T.K. said was very nice and understanding. She said that while dealing with

the Board, when they registered the petitioner, the school saw the address and thought they should be in a different school in Howell than the one they had gone to, but did not say Brick Township. She stated that her son has educational needs, and that the Howell School District has been helping him. T.K. advised that she did not know much about Brick Township, and whether they could provide the same services. She also stated that neighbors will sign a petition on their behalf.

On cross-examination, T.K. stated that from 2009 to the present she has lived in Brick Township, and she pays taxes in Brick Township. When asked where she voted, she stated that she does not vote. T.K. noted that her son attended preschool at Goddard School in Brick Township, which is a private school. She never thought that she was a Brick Township resident; she always thought that she was in Howell Township. J.K. also noted that she does not pay the bills that identify service locations.

B.K.'s father stated that taxes are paid in Brick Township, but also noted that those taxes are escrowed, and are paid by the mortgage company.

Considering the documentary and testimonial evidence presented in this matter, I **FIND** that petitioner is domiciled in Brick Township, New Jersey. I further **FIND** that students domiciled in Brick Township do not attend Howell Township schools. I further **FIND** that B.K. has attended Howell Township Schools for the period consisting of the entirety of the 2014-15, 2015-16, and 2016-17, school years. I further **FIND** that when registering B.K. in Howell Township schools, petitioner provided their correct address and that the District accepted B.K.'s enrollment. I **FIND** that the present issue arose when the District became aware of the residency discrepancy in the first half of the 2016-2017 school year, when a neighbor of the petitioner's attempted to register their child in Howell Township schools, and that petitioner became aware of the discrepancy when the District provided notice to them by way of letter on or about December 9, 2016.

CONCLUSIONS OF LAW

Public schools are required to provide a free education to individuals between the ages of five and twenty years in certain circumstances, including individuals who are domiciled within the school district. N.J.S.A. 18A:38-1(a). Domicile has been defined as

the place where a person has his true, fixed, permanent home, and principal establishment, and to which whenever he is absent he has the intention of returning. State v. Benny, 20 N.J. 238, 250 (1955). The domicile of an unemancipated child is the domicile of the parent, custodian or guardian. P.B.K. ex rel. minor child E.Y. v. Bd. of Educ. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001). Thus, a child would routinely attend school in the district where his or her parents live. N.J.A.C. 6A:22-3.1 provides that :

- (a) A student is eligible to attend a school district if he or she is domiciled within the school district.
 - 1. 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.

In the present matter, the record reflects that petitioner, B.K.'s parents with whom he resides, are not domiciled in the Howell Township School District. Accordingly, I **CONCLUDE** that B.K. is not domiciled within the respondent School District, and is therefore not eligible to attend Howell Township schools while residing at their current address. Petitioner's appeal should be **DENIED**.

N.J.S.A. 18A:38-1(b)(1) provides that when the evidence does not support the claim of the resident, the resident shall be assessed tuition:

for the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be 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 and shall be collected in the manner in which orders of the commissioner are enforced.

The record reflects that the actual cost of B.K.'s attendance in-District was \$78.36 per day for the 2014-15 school year, and \$84.24 for the 2015-16 and 2016-17 school years, and that B.K. attended Howell Township schools for the entirety of the three school years in question. Consequently, respondent is seeking a total of \$44,433 in tuition reimbursement for B.K.'s attendance.

N.J.A.C. 6A:22-6.3(a) provides that,

Tuition assessed pursuant to this section shall be calculated on a per-student basis for the period of a student's ineligible enrollment, up to one year, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23A-17.1. The individual student's record of daily attendance shall not affect the calculation.

By its plain language, the regulation appears to limit the petitioner's exposure to a maximum of one school year's tuition, which would be \$15,164 for the 2016-2017 school year.

However, N.J.A.C. 6A:22-6.3(b) provides that,

Nothing in this chapter shall preclude an equitable determination by the district board of education or the Commissioner that tuition shall not be assessed for all or part of any period of a student's ineligible attendance in the school district when the particular circumstances of a matter so warrant. In making the determination, the district board of education or Commissioner shall consider whether the ineligible attendance was due to a school district's error.

In the present matter, the record reflects that petitioner provided their actual address where they resided to the District upon enrolling B.K. There was no attempt to conceal their domicile, and no staying with a relative. The District accepted B.K., and he attended school without incident, issue or allegation of improper attendance, until the District noticed the error when a neighbor of the petitioner's attempted to enroll their child in Howell Township Schools. The petitioner was made aware of the issue on or about December 9, 2016, when the District sent them a notice alerting them of such. The circumstances certainly lend credence to an understanding that while not entirely a school district error, B.K.'s ineligible attendance in Howell Township schools was due, at least in-part, to a shared error of the District and the parents.

Considering the foregoing, I **CONCLUDE** that an equitable determination is appropriate, and tuition shall not be assessed for the period of B.K.'s ineligible attendance prior to the error being brought to the attention of the petitioner by the District through the December 9, 2016 letter. With B.K.'s ineligible attendance, after notice was given, being about one-half of the school year, I **CONCLUDE** that the District is entitled to be reimbursed for tuition by petitioner in the amount of \$7,582.

DECISION AND ORDER

It is, therefore, **ORDERED** that the Board's determination be **AFFIRMED** and that petitioner pay respondent tuition in the total amount of \$7,582 for unauthorized attendance in the District's school for the periods stated above. Petitioner's appeal is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, 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.

September 8, 2017

DATE



ELIA A. PELIOS, ALJ

Date Received at Agency:

Date Mailed to Parties:

nd

APPENDIX

WITNESSES

For Petitioner:

J.K.

T.K.

For Respondent:

Ronald Sanasac

EXHIBITS

For Petitioner:

P-1 None

For Respondent:

- R-1 Howell Township, Board of Education, Policy, 5111 Eligibility of Resident/ Nonresident Pupils
- R-2 N.J.A.C. 6A:22-1.1 Education, Supp. 12-19-16, Subchapter 3, Eligibility to Attend School
- R-3 Deed, and Supporting Documents, dated October 26, 2009
- R-4 Student Enrollment Form
- R-5 Tuition Breakdown for School Years 2014 to 2015 at \$14,105; 2015 to 2016 at \$15,164; and 2016 to 2017 at \$15,164