

Z.A., ON BEHALF OF MINOR :
CHILDREN, A.K. AND J.K., :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 : DECISION
 BOARD OF EDUCATION OF THE :
 VILLAGE OF RIDGEWOOD, :
 BERGEN COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioning parent claimed children were entitled to attend school in the district based on her own domicile there (the children are actually living with a relative in a different district), but contended that she should be excused from providing her physical address because the Board would improperly reveal her whereabouts, thereby placing her and her children in danger.

ALJ found that petitioner provided no evidence whatsoever that would establish domicile within the district subsequent to June 2001, and further discounted petitioner's contention that she should be relieved from statutory requirements. ALJ did not award tuition because the Board had not filed a counterclaim.

Commissioner adopted ALJ's decision, but modified it to award tuition to the Board, noting that a counterclaim was not a necessary precondition for such award where the petitioner failed to demonstrate entitlement to free public education in the district pursuant to *N.J.S.A.* 18A:38-1.

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.

July 23, 2003

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The record of this matter, the Initial Decision of the Administrative Law Judge (ALJ), and the transcript of proceedings at the Office of Administrative Law have been reviewed. Timely exceptions were filed by petitioner, as were replies and cross-exceptions by the Board. Because the Board’s cross-exceptions included, as a result of particular circumstances set forth below, the first calculation of tuition presented in this matter, petitioner was afforded an opportunity to respond to the Board’s submission.

In her exceptions, petitioner reiterates her primary contention that she is, in fact, domiciled in the respondent’s school district so as to entitle her children to continue attending school there, but that she must be “relieved” from proving such domicile because doing so would “endanger the welfare of her children as well as put herself in harm[’]s way.” Petitioner again opines that the respondent Board “is not trustworthy,” and “has aligned itself against petitioner***by joining with a very dangerous and unscrupulous family, thereby endangering the lives” of her and her children, so that “giving them my physical address poses a real and present threat to my physical safety.” (Petitioner’s Exceptions, quotations at 3-4) In support of her

contention in this regard, petitioner includes with her exceptions two documents referenced by her during proceedings before the ALJ, but never entered into evidence.

In reply, the Board urges adoption of the ALJ's conclusion that petitioner has completely failed to meet her burden of demonstrating that A.K. and J.K. are entitled to attend school in the district, or that they were so entitled at any time subsequent to June 2001. (Board's Reply and Cross-Exceptions at 1-2) However, the Board excepts to the ALJ's suggestion that the Board waived its right to seek tuition from petitioner for the 2001-02 and 2002-03 school years. Rather, the Board explains, at the hearing conducted in this matter on June 2, 2003, "in the interests of efficiency and preserving the Court's time, and out of kindness to Petitioner, the Board stipulated on the record that it would only seek tuition if exceptions were filed by the Petitioner, at which point the Board would submit information regarding the outstanding tuition due." Since petitioner did file exceptions, the Board now seeks tuition and submits a certification as to the amount of tuition due, a total of \$40,126 for both students. (*Id.* at 3-4)¹

In response to the Board's cross-exceptions, petitioner revisits her prior argument that the Board's alleged revelation of her address to an unauthorized party "nullifies" any statutory obligation she would otherwise have had to provide her address to the Board. (Petitioner's Reply to Cross-Exceptions at 1-4) Petitioner responds to the Board's demand for, and calculation of, tuition as set forth in its cross-exceptions, by reiterating that she owes *nothing* because she is domiciled in Ridgewood and because the Board has made it impossible for her to prove that contention, so that its demand for tuition is tantamount to "a perpetrator seeking money compensation from his victim." (*Id.* at 4-5, quotation at 4)

¹ For 2001-02, petitioner had one child in middle school (\$9,920) and one child in high school (\$10,105), and for 2002-03, one child in middle school (\$10,465) and one child in high school (\$10,456). These amounts (a total of \$40,946) are offset by an \$800 payment previously made by petitioner.

Upon careful and independent review of this matter, the Commissioner must concur with the ALJ that petitioner cannot prevail on the present record. Petitioner claims that her children are entitled to attend school in the district based on her domicile there, yet she offers nothing more than her own assertion in support of that contention; indeed, as noted by the ALJ at hearing (T 29)², petitioner has provided not “a scintilla of evidence,” direct or indirect, linking her to a domicile anywhere within the Village of Ridgewood subsequent to leaving her prior residence on June 30, 2001. To the contrary, petitioner’s entire appeal is based on the premise that she should not have to provide any such evidence, either to the Board or to the ALJ, because the Board’s own unlawful actions have nullified the requirement that she do so.³ However, even accepting, *arguendo*, that a legitimate fear for her own and her children’s safety might in some way mitigate petitioner’s obligation to provide a specific physical address as she attempts to demonstrate domicile in the district, petitioner has offered nothing substantial in support of even that claim. Although petitioner asserted at hearing that the referenced threat came from her former husband, it was quickly established on record that any threat of that nature had long since ceased (T 12-19), whereupon petitioner pressed her unsupported belief that the only way a particular person could have gotten her former address (the address in Ridgewood from which she subsequently moved) was by hacking into the school computer system (T 5-7, 17-18, 23). Finally, petitioner repeatedly accuses the Board of being in ongoing collusion with a dangerous and unsavory family from whom petitioner formerly rented a residence, and that the Board previously provided her office address to a member of this family, who subsequently tampered with her vehicle. Although petitioner claims she can prove this latter allegation, no dispositive

² The designation “T” indicates the transcript of proceedings before the ALJ on June 2, 2003, followed by the page number referenced.

³ Petitioner invokes the standards for grant of emergent relief, *Crowe v. DeGioia*, 90 N.J. 126 (1982), and the School Ethics Act, N.J.S.A. 18A:12-24.1, in support of this contention; however, as noted by the Board and the ALJ, neither of these authorities has any applicability herein. Petitioner also errs in her contention (see, for example, Petitioner’s Reply to Cross-Exceptions at 5) that it is the Board’s burden to prove that she does *not* live in Ridgewood.

evidence in support of it was brought to the record,⁴ and, indeed, even if the Board had improperly released information about petitioner, the appropriate remedy would not be permitting her children's continued enrollment in the district without sufficient proof of domicile. Were the Commissioner to accept petitioner's wholly unsubstantiated assertions for this purpose, he would be setting a dangerous and unmanageable precedent in any effort to determine a student's right to free public education in a district pursuant to *N.J.S.A.* 18A:38-1.

Under the circumstances, therefore, petitioner has left the Board, the ALJ and the Commissioner with no alternative but to conclude that she has not demonstrated her children's entitlement to attend school in the Ridgewood district pursuant to *N.J.S.A.* 18A:38-1 subsequent to June 30, 2001, and the Commissioner adopts the ALJ's decision so finding. However, the Commissioner also observes that, contrary to the suggestion of the ALJ (Initial Decision at 4), in order for a board to be entitled to collect tuition in a residency matter where the petitioner has failed to prevail on appeal to the Commissioner and a tuition calculation for the period of ineligible attendance exists on record, it is not necessary for the board to have actually filed a counterclaim with its Answer to the Petition of Appeal. *N.J.S.A.* 18A:38-1, *N.J.A.C.* 6A:3-8.1(d), *N.J.A.C.* 6A:28-2.10(b). That being so, and the hearing transcript (T 25-31) supporting the Board's representation on cross-exception as to how it indicated it would proceed with respect to the collection of tuition,⁵ the Commissioner holds that the Board is entitled to collect tuition in this matter. Nonetheless, because the record clearly demonstrates that petitioner's

⁴ In her exceptions, petitioner includes a December 2, 2002 letter from the Board's Director of Human Resources stating that "the school district has not given your work address to any unauthorized person," one page of a transcript from a March 7, 2003 Superior Court proceeding between petitioner and the family in question where an incomplete statement at the top of the page appears to suggest that the complainant's attorney (a family member himself and the person petitioner accuses of tampering with her vehicle) may have obtained petitioner's work address from the Board of Education, and a copy of a police report based on petitioner's allegation of vehicle tampering. However, even if these documents had been entered as evidence, which it appears that petitioner herself may have elected not to do (T 17), and even if the Commissioner were not now precluded from considering them pursuant to *N.J.A.C.* 1:1-18.4(c), they would not alter the Commissioner's determination herein.

⁵ At hearing, the Board refers to petitioner filing "appeals," but its references to the matter ending "with this court" in order for tuition to be forgiven clarify its actual intent.

residency was not raised as an issue by the Board until just before the start of the 2002-03 school year (T 25), the Commissioner declines to order payment of tuition for both 2001-02 and 2002-03, and instead directs that petitioner remit to the Board a total of \$20,121 in payment for the 2002-03 school year (\$10,465 + \$10,456 less petitioner's \$800 payment; see note 1 above).
N.J.A.C. 6A:28-2.10(c)

Accordingly, the Initial Decision of the Office of Administrative Law, as modified above with respect to payment of tuition, is adopted as the final decision in this matter. A.K. and J.K. are found ineligible for a free public education in the Ridgewood School District absent a subsequent demonstration by Z.A. that they are, in fact, domiciled there,⁶ and Z.A. is directed to remit to the Board \$20,121 for the students' attendance during the 2002-03 school year.

IT IS SO ORDERED.⁷

COMMISSIONER OF EDUCATION

Date of Decision: July 23, 2003

Date of Mailing: July 24, 2003

⁶ Petitioner is reminded of her obligation under the compulsory education law to ensure that her children attend a public or private school, or receive equivalent instruction elsewhere. *N.J.S.A.* 18A:38-25 *et seq.*

Additionally, the Board is reminded that, should petitioner subsequently provide information establishing a domicile in the district, address information is a pupil record that may only be accessed in accordance with *N.J.A.C.* 6:3-6.1 *et seq.* and other applicable law, including *N.J.S.A.* 47:1A-1 *et seq.* The Commissioner here concurs with the Board and the ALJ that *N.J.S.A.* 47:4-1 *et seq.*, cited by petitioner in support of her allegation that the Board improperly revealed her office address, has no applicability in this matter.

⁷ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*