

C.R. on behalf of minor child T.K.G., :
PETITIONER, :
COMMISSIONER OF EDUCATION
V. :
DECISION
BOARD OF EDUCATION OF THE :
TOWNSHIP OF HOPEWELL, :
CUMBERLAND COUNTY. :

SYNOPSIS

Petitioner appealed the determination of the respondent Board that her son, T.K.G., was not eligible for a free public education in the Hopewell Township school district during the 2009-2010 school year. Petitioner asserts that T.K.G. has been raised by K.R., his grandmother, since birth and has always been domiciled at K.R.'s home in Hopewell Township. The respondent Board contends that T.K.G. has been "kept in the home" of K.R. for reasons not involving economic hardship. After petitioner secured an order from Superior Court on May 21, 2010, granting K.R. primary residential custody, the Board conceded that subsequent to the court order, T.K.G. is domiciled in Hopewell and entitled to attend school in the district. However, respondent demands tuition reimbursement for T.K.G.'s school attendance in Hopewell from September 2009 through May 21, 2010.

The ALJ found that: C.R. is T.K.G.'s mother, but K.R. has been his guardian since birth; T.K.G. is and always has been domiciled in Hopewell Township with his grandmother, K.R.; *N.J.S.A. 18A:38-1(a)* provides that public schools shall be free to any school aged person who is domiciled within the school district; and the Superior Court issued an order on May 21, 2010 designating K.R. as the primary residential custodian, thereby memorializing what had always been true in fact. Accordingly, the ALJ granted the petitioner's residency appeal.

Upon a full and independent review, the Commissioner concurred with the ALJ that T.K.G. has always resided in Hopewell Township. Further, by virtue of the fact that K.R. has served as T.K.G.'s *de facto* parent since his birth, he is domiciled with her and is entitled to attend the district schools free of charge. Accordingly, the petition was granted and the respondent Board's counterclaim for tuition was denied.

<p>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.</p>

OAL DKT. NO. EDU 8145-10
AGENCY DKT. NO. 60-4/10

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The record of this matter¹ and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions were fully considered by the Commissioner in making his determination herein. The Commissioner concurs with the Administrative Law Judge’s determination that T.K.G. is now, and was in September 2009, eligible for a free public education in respondent’s district. The instant residency dispute presents unusual facts, but is easily resolved upon examination of the legislative intent underlying the relevant statutes and regulations.

The following facts are undisputed. T.K.G. was born in Maryland in 2004 while his mother, C.R., was in college. At that time C.R.’s domicile was her parents’ home at 51 P. Terrace, Hopewell, New Jersey. A few days after T.K.G.’s birth, C.R.’s mother, K.R., took him back to New Jersey, and raised him at 51 P. Terrace from that day forward. When C.R. graduated from college in 2006, she returned to her parents’ home in Hopewell and resided there until July 2007, when she leased an apartment at 83 C. Drive, Bridgeton, New Jersey.

In September 2008, T.K.G. was enrolled in a day care center that sent him for a few hours each day to a preschool class run by the Bridgeton Board of Education. As conceded by

¹ No transcript of the January 11, 2011 hearing in the OAL has been provided to the Commissioner.

respondent in its exceptions, Hopewell did not have a pre-school program at the time. (Respondent's Exceptions at 2) C.R. used her Bridgeton address to enroll T.K.G. in the Bridgeton daycare/preschool program and brought him there in the mornings. K.R. picked him up in the afternoons.

In the following September – 2009 – C.R. registered T.K.G. for school in Hopewell. Where the registration form asked for the names of T.K.G.'s parents/guardians, she entered her and her fiance's names. (Respondent's Exhibit R-2) Where the form asked for the student's telephone number and address, she entered K.R.'s telephone number and address. (*Ibid.*) In response to the question on the form about what sort of residence T.K.G. lived in, including whether T.K.G. lived in "[an]other family member's" home, C.R. checked the space that indicated that none of the printed options applied to T.K.G. (*Ibid.*)

Subsequent to the registration of T.K.G., respondent assigned its truant consultant, Donald Wulff, to investigate T.K.G.'s residency. Wulff conducted nine early morning surveillances of K.R.'s residence in Hopewell and C.R.'s apartment in Bridgeton – over a period of four weeks. On three of the nine mornings, C.R. was observed bringing T.K.G. to K.R.'s home. On six of the occasions, as the ALJ noted, there was no evidence that T.K.G. was residing anywhere other than at K.R.'s home in Hopewell. Nonetheless, on March 8, 2010, respondent determined that T.K.G. was ineligible for a free education in Hopewell and sent notice to petitioner (at the Hopewell address) of same.

In consequence of respondent's determination, petitioner secured a court order dated May 21, 2010 memorializing K.R.'s residential custody of T.K.G. (Petitioner's Exhibit P-1) Counsel for respondent has conceded that subsequent to the date of the Superior Court order, T.K.G. is "domiciled" in Hopewell and consequently entitled to attend school in the district.

However, respondent demands tuition reimbursement for T.K.G.'s school attendance in Hopewell from September 2009 through May 21, 2010.

“Domicile” of a minor for purposes of entitlement to a free education in a given school district pursuant to *N.J.S.A.* 18A:38-1, is defined by *N.J.A.C.* 6A:22-3.1(a)(1)(i):

- (a) A
student over five and under 20 years of age pursuant to *N.J.S.A.* 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in a school district if the student is domiciled within the district.
 - 1. A student is domiciled in the school district when he or she is the child of a parent or guardian whose permanent home is located within the school district
 - i. Where a student's parents or guardians are domiciled within different school districts, and where there is no court order or written agreement between the parents designating the school district for school attendance, the student's domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year, regardless of which parent has legal custody.

While CR is TKG's biological parent, the record reveals that notwithstanding the absence of a court order, K.R. – T.K.G.'s grandmother – has served as T.K.G.'s *de facto* parent and/or guardian since his birth. She raised the child during the crucial bonding years of infancy. Moreover, the evidence as a whole supports petitioner's contention that when she moved to the Bridgeton apartment in 2007, T.K.G. – who at that point was over three years old – stayed in Hopewell with K.R. At the OAL hearing on January 11, 2011, C.R. testified that her son was being brought up by her parents in Hopewell, but that she enjoyed visitation, bringing T.K.G. to her

apartment for overnight stays.² This testimony is harmonious with the results of Wulff's surveillance. (Initial Decision at 5)

The Commissioner will not punish a family which decided at the beginning of a child's life that his grandmother, rather than his biological mother, should be his primary parent. Requiring that T.K.G. leave his residence, or that the family pay tuition for his education in the district where he has always resided, would be punitive.

Further, as T.K.G.'s residence has always been in Hopewell, no attempts to 'school shop' can be attributed to C.R. or K.R. *See, e.g. G.A. v. Borough of Somerville, 96 N.J.A.R.2d (EDU) 1012, 1015* (Where petitioner, a domiciliary of Somerville, had been the *de facto* guardian of several siblings since their arrivals in 1993, 1994 and 1995 from the Philippines, had received notices in 1995 that her siblings were ineligible for free public educations in Somerville, and had subsequently secured legal guardianship of the minor siblings, no back tuition was due to respondent; no 'school shopping,' a phenomenon which the 1994 amendments to *N.J.S.A. 18A:38-1* were meant to curb, was suggested by the facts of the case).

The facts of this case lead to the conclusion that T.K.G.'s family has always intended that K.R. be T.K.G.'s primary parent and that T.K.G. reside with her. This conclusion is further corroborated by the fact that – as mentioned in respondent's exceptions – T.K.G. remains with his grandparents while C.R. has moved a considerable distance away after remarrying in June 2010.

In its exceptions, respondent asserts that the ALJ made an error of law in finding that K.R.'s *de facto* guardianship satisfies *N.J.A.C. 6A: 22-3.1(a)(1)(i)*. That regulation states:

² She had so testified at the formal hearing before the respondent Board on March 8, 2010.

A student is domiciled in the school district when he or she is the child of a parent or guardian whose permanent home is located within the school district Where a student’s parents or guardians are domiciled within different school districts, and where there is no court order or written agreement between the parents designating the school district for school attendance, the student’s domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year, regardless of which parent has legal custody.

Respondent reasons that since *N.J.A.C. 6A:22-1.2 (Definitions)* states that

“Guardian” means a person to whom a court of competent jurisdiction has awarded guardianship or custody of a child, provided that a residential custody order shall entitle a child to attend school in the residential custodian’s school district subject to a rebuttable presumption that the child is actually living with such custodian

K.R. was not a guardian of T.K.G. prior to May 21, 2010, and T.K.G. could consequently not have been domiciled in Hopewell before that date.

However, New Jersey law was never meant to penalize innocent parties, **elevate form** over **substance** or overlook the substantial state interest in ensuring the education of all its children. [*Gunderson v. City of Brigantine Bd. of Educ.*, 95 N.J.A.R.2d \(EDU\) 39, 42, adopted \(Comm'r 1994\), aff'd 95 N.J.A.R.2d 132 \(St. Bd. 1995\)](#) (student who lived with petitioner, but whose only living parent refused to sign an affidavit assigning custody to petitioner, was entitled to a free education in the school district in which petitioner resided). T.K.G.’s family was clearly not school shopping when it enrolled him in respondent’s school. The Commissioner is confident that a family court judge would have awarded K.R. residential custody prior to T.K.G.’s enrollment in school in 2009 – had the family realized that such an order would be needed and applied for same – and finds that the ALJ correctly concluded that T.K.G. is and has always been domiciled in Hopewell.

Accordingly, the petition is granted and the counterclaim is denied.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2011

Date of Mailing: March 24, 2011

³ 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*).