

103-18R

T.K., ON BEHALF OF MINOR CHILD, B.K., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION ON REMAND  
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 had enrolled her child in the Board's school district in 2014, using the Howell Township mailing address of the property that the family owns. In December 2016, petitioner received a phone call from the Board advising that B.K. was enrolled in the wrong school district, as the family's house is actually situated in Brick Township. The Board filed a counterclaim for tuition. Hearings were held at the Office of Administrative Law (OAL) and an Initial Decision was issued in September 2017, in which the ALJ concluded that T.K. is domiciled in Brick Township and B.K. is therefore not entitled to a free public education in Howell Township schools; however, the ALJ also concluded that an equitable determination is appropriate in this case because petitioner had been unaware that B.K. was enrolled in the wrong school district. Accordingly, the ALJ assessed tuition only for the period after December 9, 2016, the date upon which petitioner received notice of the residency error. Subsequently, the Commissioner found that the record lacked the information necessary to determine how much tuition is owed to the school district, and therefore remanded the Initial Decision to the OAL for supplementation of the record and calculation of tuition due.

On remand, the ALJ found, *inter alia*, that: the factual findings set forth in the original Initial Decision, issued September 8, 2017, were adopted and incorporated in the decision on remand; the respondent Board provided certification from the Assistant Superintendent for Business Administration/Board Secretary regarding the number of school days for which B.K. was ineligible and the daily tuition rate effective during the 2016-2017 school year; based on the certification, the Board is owed tuition for 124 days of ineligible attendance at \$84.24 per day, or \$10,445.76. Accordingly, the ALJ ordered the Board's residency determination affirmed, and further ordered the petitioner to pay the respondent tuition in the amount of \$10,445.76.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, and directed the petitioner to reimburse the Board for tuition as set forth above. The petition was dismissed.

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.
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April 5, 2018

OAL DKT. NO. EDU 16020-17  
(EDU 00360-17 ON REMAND)  
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 ON REMAND  
OF HOWELL, MONMOUTH COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

The record in this matter – including the September 8, 2017 Initial Decision of the Office of Administrative Law (OAL), as well as the February 23, 2018 Initial Decision of the OAL issued pursuant to the Commissioner’s October 23, 2017 remand – has been reviewed. The parties did not file exceptions.

On October 23, 2017, the Commissioner determined that petitioner failed to sustain her burden of establishing that she was a domiciliary of Howell Township during the 2014-2015, 2015-2016 and 2016-2017 school years; thus, the minor child was not entitled to a free public education in the District’s schools. 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. Because petitioner only became aware on December 9, 2016 that her home was in Brick Township, rather than Howell Township, the Commissioner limited the Board to tuition reimbursement from December 9, 2016 to the end of the 2016-2017 school year. As the record lacked the information required to calculate the amount of tuition owed to the District, the Commissioner remanded the matter to

the OAL for calculation of tuition due to the District and supplementation of the record as warranted.

Upon review, the Commissioner agrees with the Administrative Law Judge that the Board is entitled to tuition reimbursement in the amount of \$10,445.76 (\$84.24 per day for 124 days) for the time period from December 9, 2016 to the end of the 2016-2017 school year, during which time petitioner's minor child was ineligible to attend school in the District.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse the Board in the amount of \$10,445.76 for tuition costs incurred during the time period for which B.K. was ineligible to attend school in Howell Township. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>1</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 5, 2018

Date of Mailing: April 5, 2018

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 16020-17  
AGENCY REF. NO. 317-12/16  
(ON REMAND OAL DKT. NO. EDU  
00360-17)

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

Petitioner,

v.

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

Respondent.

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**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: January 19, 2018

Decided: February 23, 2018

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

**STATEMENT OF THE CASE**

Petitioner, T.K., on behalf of minor child, B.K., appeals the residency determination, and assessment of tuition by the Board of Education of the Township of Howell, Monmouth

County (Board, respondent, District), 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 original 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 initial decision was issued in the original matter by the undersigned on September 8, 2017. On October 23, 2017, the Commissioner of Education issued a decision concurring with certain findings of fact and conclusions of law but remanding the matter to the OAL "for calculation of tuition due to the District and supplementation of the record as warranted."

On December 6, 2017, a conference call was held between the parties and the undersigned. There was no disagreement or difference of interpretation or opinion as to the scope of the remand or what was required by the remand order, and all agreed that no further testimony was needed. It was agreed that the District would provide in writing a determination of the number of school days at issue along with supporting documentation by December 15, 2017. Petitioner would be given until January 2, 2018 to respond. It was agreed that in the event that no response was submitted petitioner would be deemed to have not disputed the District's determination as to the number of days.

The District provided its submission on December 11, 2017, although it was received by the OAL on December 22, 2017. As of January 19, 2018, no response was received

from petitioner. The District's submission was deemed to not be in dispute and the record closed on the date.

### **THE REMAND ORDER**

In the Remand Order of October 23, 2017, the Commissioner concurred with the findings and conclusions contained in the initial decision that petitioner failed to meet her burden in demonstrating that she was domiciled in Howell Township, that the minor child was not entitled to a free public education in the District's schools, and that the District is entitled to reimbursement from December 9, 2016 to the end of the 2016-2017 school year. Noting, however, that the record did not identify the number of ineligible days from December 9, 2016 to the end of the 2016-2017 school year, and that an accurate count of such is necessary in order to calculate the tuition owed to the District, the Commissioner remanded the matter to the OAL for "calculation of tuition due to the district and supplementation of the record as warranted."

### **FACTUAL DISCUSSION AND FINDINGS**

The Factual Discussions and Findings set forth in the initial decision (C-2) are hereby **ADOPTED** and **INCORPORATED** into this Initial Decision on Remand as if set forth in full herein.

Additionally, respondent provided and relied upon the certification of Ronald Sanasac, Assistant Superintendent for Business Administration/Board Secretary in which he determined that the number of school days in question is 124. As petitioner provided no response in the substantial time since the certification was submitted, it is deemed to not be in dispute. Although Sanasac states in the certification that there were 124 days in which the Howell Township Schools were in session "for the period December, 2016 to June 23, 2017, the last day of the 2017-2017 school year," a review of the support documentation makes clear that that number applied to the period commencing December 9, 2016.

Accordingly, I **FIND** that there were 124 school days held during the period from December 9, 2016 to the end of the 2016-2017 school year.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The Legal Analysis and Conclusions set forth in the initial decision (C-2) are hereby **ADOPTED** and **INCORPORATED** into this initial decision on remand as if set forth in full herein.

Additionally, it has been previously determined that the actual cost of B.K.'s attendance in-District is \$84.24 per day for the 2016-17 school year, and that the District is entitled to reimbursement from December 9, 2016 to the end of the 2016-2017 school year. The record on remand reflects that there were 124 school days held during the period from December 9, 2016 to the end of the 2016-2017 school year. Accordingly, I **CONCLUDE** that the District is entitled to be reimbursed for tuition by petitioner in the amount of \$10,445.76.

### **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 \$10,445.76 for unauthorized attendance in the District's school for the period 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.



February 23, 2018 \_\_\_\_\_  
DATE

\_\_\_\_\_  
**ELIA A. PELIOS, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

Nd/mph

**APPENDIX**

**WITNESSES**

**For Petitioner:**

None

**For Respondent:**

None

**EXHIBITS**

**For Petitioner:**

None

**For Respondent:**

R-1 Determination of Number of School Days between December 9, 2016 and the End of the 2016-2017 School Year

**For the Tribunal**

C-1 Remand Order

C-2 Initial Decision in Original Matter