

New Jersey Commissioner of Education

Final Decision

K.P., on behalf of minor children, K.P. and K.P.,

Petitioner,

v.

Board of Education of the Township of Hamilton,
Mercer County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that his minor child, Ky.P., was not entitled to a free public education in Hamilton schools during the 2022-2023 school year. (This matter pertains solely to Ky.P.; in the within decision, the Commissioner refers to K.P.’s minor children – both of whom share the initials K.P. – as Ky.P. and Ka.P., for purposes of clarity; the Board explained in its March 23, 2023, determination letter that it did not take any action with respect to Ka.P. as he remained eligible to attend school in Hamilton.) The Board contended that Ky.P. did not live with her father in Hamilton, but rather resided in Princeton Township, and demanded payment of tuition in the amount of \$4,456.65 for Ky.P.’s ineligible attendance in the district.

The ALJ found, *inter alia*, that: after participating in a prehearing telephone conference on August 1, 2023, petitioner failed to appear at all other scheduled proceedings in this matter; petitioner, Ky.P.’s father, is undisputedly domiciled in Hamilton Township and, therefore, Ky.P. is also domiciled in Hamilton Township; absent sufficient proof that Ky.P. does not live with her father or that he does not have custody, *N.J.A.C. 6A:22-3.1(a)(1)* applies; and the fact that Ky.P. spent a few nights in December 2022 at a non-parental residence in Princeton is of “little weight.” The ALJ concluded that Ky.P. was entitled to a free public education in Hamilton Township. Accordingly, petitioner’s appeal was granted and the Board’s counterclaim for tuition was denied.

Upon review, the Commissioner rejected the Initial Decision of the OAL, finding that: the record is devoid of evidence that the petitioner and Ky.P. are domiciled in Hamilton; petitioner failed to appear at the hearing and did not supply the ALJ with any evidence in support of his appeal; and petitioner failed to satisfy the requisite burden of proof in this case. The Commissioner, therefore, rejected the ALJ’s conclusion that Ky.P. is entitled to a free public education in Hamilton as unsupported by the record, and further rejected the ALJ’s denial of the Board’s counterclaim for tuition. Accordingly, the Commissioner dismissed the petitioner’s unprosecuted residency appeal and remanded the matter to the OAL for further proceedings on the counterclaim in order to develop the factual record, i.e., to establish the number of days of Ky.P.’s ineligible attendance and the per diem cost of tuition in the school district during the period of her ineligible attendance.

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.

138-24
OAL Dkt. No. EDU 04952-23
Agency Dkt. No. 137-5/23

New Jersey Commissioner of Education
Final Decision

K.P., on behalf of minor children, K.P. and K.P.,

Petitioner,

v.

Board of Education of the Township of
Hamilton, Mercer County,

Respondent.

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

This matter concerns the Board's March 23, 2023, determination that Ky.P. does not reside in Hamilton Township and its demand for payment of tuition in the amount of \$4,456.65 for Ky.P.'s ineligible attendance at school in the district.¹ On May 17, 2023, petitioner appealed the Board's residency determination to the Commissioner. The Board filed an answer and counterclaim seeking payment of tuition.

¹ Because they share the same initials, in this decision, the Commissioner refers to K.P.'s minor children as Ky.P. and Ka.P for purposes of clarity. In its March 23, 2023, determination letter, the Board explained that it did not take any action with respect to Ka.P. and confirmed that he remained eligible to attend school within the Hamilton Township School District. Therefore, this matter pertains only to Ky.P., despite both children being named in the case caption.

After the matter was transmitted to the OAL, petitioner participated in one prehearing telephone conference on August 1, 2023. He then failed to appear for all subsequent telephone conferences. On November 9, 2023, the OAL sent notice to the parties, via regular mail and email, regarding the January 5, 2024 hearing, to be conducted via Zoom. The notice advised that if the parties failed to appear, the file would be returned to the transmitting agency for appropriate action, which could include the granting of the relief requested by the other party.

Petitioner failed to appear for the scheduled hearing on January 5, 2024. The Board appeared and called one witness, Dr. James Altobello, Director of Operations, to testify.² The Board determined that Ky.P. resided in Princeton Township with her brother's mother and was therefore ineligible to attend school in the Hamilton Township district. A third-party surveillance company hired by the Board observed Ky.P. at the Princeton Township address on four occasions in December 2022 before school. On January 9, 2024, Board counsel submitted a letter to the ALJ in support of its counterclaim detailing the Board-approved tuition rate for the 2022-2023 school year and the per diem rate. The letter sought reimbursement for 55 days of ineligible attendance by Ky.P. Having received no explanation from petitioner regarding his failure to appear, the Administrative Law Judge (ALJ) closed the record on January 16, 2024.

In her Initial Decision, the ALJ found, among other things, that it was undisputed that petitioner, Ky.P.'s father, is domiciled in Hamilton Township and that, therefore, Ky.P. is also domiciled in Hamilton Township. The ALJ reasoned that "[i]n the absence of sufficient proof that K[y].P. does not live with her father or that he does not have custody, the relevant Code

² The parties have not provided the Commissioner with a transcript of the January 5, 2024, hearing.

provision is clear. That K[y].P. spent a few nights in December 2022 at a non-parental residence in Princeton bears little weight in this regard.” Initial Decision at 6. Accordingly, the ALJ concluded that Ky.P. was entitled to a free public education in Hamilton Township and denied the Board’s counterclaim for tuition.

In their exceptions, the Board contends that the Commissioner should reject the Initial Decision because: (1) petitioner failed to appear and presented no evidence regarding his domicile or Ky.P.’s domicile; (2) absent evidence from petitioner, there is no factual basis for the ALJ’s reversal of the Board’s residency determination or the ALJ’s conclusion that both petitioner and Ky.P. are domiciled in Hamilton Township; (3) the ALJ misconstrued the burden of proof, as it is petitioner that must sustain the burden of demonstrating the student’s right to attend school in the district; and (4) the district fully complied with its obligation under *N.J.A.C. 6A:22-4.2* to determine whether students are eligible to attend school in its district.

“*N.J.S.A. 18A:38-1(a)* mandates that public schools are free to any person, [over age five and] under twenty years of age, ‘who is domiciled within the school district.’” *K.K-M., on behalf of A.W. v. Bd. of Educ. of City of Gloucester City*, 463 *N.J. Super.* 24, 31 (App. Div. 2020). A child’s parents “‘shall have the burden of proof by a preponderance of the evidence’ to prove domicile in the school district.” *D.L. v. Bd. of Educ. of Princeton Reg’l Sch. Dist.*, 366 *N.J. Super.* 269, 273 (App. Div. 2004) (quoting *N.J.S.A. 18A:38-1(b)(2)*).

Upon review, the Commissioner rejects the Initial Decision in its entirety. In particular, the Commissioner rejects the ALJ’s finding that petitioner and Ky.P. are domiciled in Hamilton Township because the record is devoid of evidence to establish those facts. As noted, petitioner failed to appear at the hearing and did not supply the ALJ with any evidence in

support of his petition of appeal. Therefore, he did not satisfy the requisite burden of proof. In short, the ALJ assumed facts not in evidence. For these reasons, the Commissioner rejects the ALJ's conclusion that Ky.P. is entitled to a free public education in Hamilton Township as unsupported by the record.

Additionally, the Commissioner rejects the ALJ's denial of the Board's counterclaim. *N.J.A.C. 6A:22-6.2(a)* provides that if "petitioner does not sustain the burden of demonstrating the student's right to attend the school district, or the petitioner . . . fails to prosecute [the appeal] . . . the Commissioner may assess tuition for the period during which the hearing and decision on appeal were 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."

Because petitioner failed to prosecute the appeal, the Commissioner shall assess tuition against petitioner for the time period during which Ky.P. was ineligible to attend school in the district. *N.J.S.A. 18A:38-1(b)*. The statute provides that the Commissioner may order tuition "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." *N.J.S.A. 18A:38-1(b)*. It appears that the ALJ made factual findings regarding the annual per pupil cost and daily tuition rate based upon the letter submitted by Board counsel dated January 9, 2024. However, because the record lacks a certification from the Board verifying the approved tuition rate for the 2022-2023 school year, the per diem cost of tuition, and Ky.P.'s period of ineligible attendance, the Commissioner is unable to assess tuition against petitioner at this time.

Accordingly, petitioner's residency appeal is hereby dismissed, and the Board's determination that Ky.P. was not entitled to a free public education in Hamilton Township

remains in effect. This matter is remanded to the OAL for further proceedings on the counterclaim to develop the factual record regarding the number of days of Ky.P.'s ineligible attendance and the per diem cost of tuition.

IT IS SO ORDERED.



ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 15, 2024

Date of Mailing: March 20, 2024



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. EDU 04952-23

AGENCY DKT. NO. 137-5/23

K.P. ON BEHALF OF K.P AND K.P.,

Petitioner,

v.

**TOWNSHIP OF HAMILTON BOARD OF
EDUCATION, MERCER COUNTY,**

Respondent.

K.P., petitioner, pro se

Michael Pattanite, Esq., for respondent (Lenox, Socey, Formidoni, Giordano,
Carrigg, Lang & Casey, LLC, attorneys)

Record Closed: January 16, 2024

Decided: February 6, 2024

BEFORE **NICOLE T. MINUTOLI**, ALJ:

STATEMENT OF THE CASE

Petitioner K.P. (petitioner¹) appeals the determination of respondent, Township of Hamilton Board of Education (Board), that his daughter K.P.² is not domiciled in the Township of Hamilton School District (District) and should be disenrolled and assessing back tuition in the amount of \$4,456.65 for the days of illegal attendance.

PROCEDURAL HISTORY

Petitioner filed an appeal with the Department of Education on May 17, 2023. The Board filed an answer on June 5, 2023. The matter was transmitted to the Office of Administrative Law, where on June 5, 2023, it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A prehearing telephone conference was scheduled for June 20, 2023, but both parties failed to appear.

On July 12, 2023, notice was sent to the parties of the rescheduled conference on August 1, 2023, through email, and both parties appeared for this conference, during which the parties discussed K.P.'s domicile and agreed to appear at a subsequent conference.

On August 7, 2023, notice was sent to the parties of a telephone conference on September 5, 2023, through regular mail and email. A dial-in number was provided.

Petitioner failed to appear for the September 5, 2023, telephone conference. Petitioner failed to notify my office in advance or to request an adjournment. Petitioner then failed to appear for four subsequent telephone conferences.

¹ Petitioner K.P. (father) will hereinafter be referred to as "petitioner"; K.P. (daughter) will be referred to as "K.P."

² The pleadings should only have named K.P. daughter. There is no residency issue with K.P. son.

On November 9, 2023, notice was sent to the parties of a hearing, by regular mail and email, on January 5, 2024. The notice stated:

If you do not attend the hearing, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party.

On January 5, 2024, the Board appeared for the proof hearing, but petitioner failed to appear and failed to notify my office in advance or to request an adjournment. The Board presented its proofs for its counterclaim and the record remained open for petitioner to explain his nonappearance and for the Board to provided additional information supporting its counterclaim. The Board made its submission on January 9, 2024. When no explanation was received from petitioner regarding his failure to appear, the record closed on January 16, 2024.

FACTUAL DISCUSSION

Based on the testimony of Dr. James Altobello, District director of operations, and the documentary evidence submitted by respondent, I **FIND** the following as **FACTS**:

1. Petitioner is a resident of Hamilton Township.
2. Petitioner's daughter, K.P., began attending school in the District in September 2022, as a third-grade general-education school student for the 2022–2023 school year.
3. Thereafter, the respondent received information that K.P. was not residing in Hamilton Township but was residing in Princeton Township.
4. The Board engaged the services of Tri-Shield Security and Protection to conduct an investigation into K.P.'s actual residence.

5. Surveillance was conducted at the Princeton Township address, and after a complete investigation it was determined that K.P. resided at the Princeton Township address with her brother's mother and did not reside in Hamilton Township.
6. On February 6, 2023, a residency hearing was conducted before the Board. Petitioner did not attend the residency hearing or claim that he did not receive notice.
7. On February 22, 2023, the Board determined that K.P. was not domiciled in or a resident of the Township of Hamilton, which would have entitled her to attend a school within the District without a tuition obligation for school year 2022–2023.
8. By letter dated March 23, 2023, the Board notified petitioner of its decision that K.P. was ineligible to attend the District schools and of his right to appeal. This letter was sent to petitioner at both the Hamilton Township and Princeton Township addresses, via regular mail and certified mail, return receipt requested.
9. Between March 23, 2023, and June 21, 2023, K.P. attended school in the District for fifty-five days.
10. The annual per-pupil cost for a general-education school student in third grade in the District is \$14,586.
11. The District was in session during the 2022–2023 school year for 180 days; the daily tuition rate for a general-education school student is \$81.03. The Board assessed K.P. \$4,456.65, for fifty-five days of ineligible attendance.
12. K.P. is not registered in the District for the 2023–2024 school year, and did not attend school in the District during the 2023–2024 school year.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

At issue is whether K.P. (daughter) was entitled to a free education under N.J.S.A. 18A:38-1, which provides that public schools shall be free to persons over five and under twenty years of age who are “domiciled within the school district.” See V.R. ex rel A.R. v. Hamburg Bd. of Educ., 2 N.J.A.R. 283, 287 (1980), aff’d, State Bd., 1981 S.L.D. 1533, rev’d on other grounds sub nom. Rabinowitz v. N.J. State Bd. of Educ., 550 F. Supp. 481 (D.N.J. 1982) (New Jersey requires local domicile, as opposed to mere residence, in order for a student to receive a free education).

A person who meets age requirements and is domiciled within a school district may attend its public schools free of charge. N.J.S.A. 18A:38-1(a). A person may have many residences but only one domicile. Somerville Bd. of Educ. v. Manville Bd. of Educ., 332 N.J. Super. 6, 12 (App. Div. 2000), aff’d, 167 N.J. 55 (2001). A child’s domicile is normally that of his or her parents. Ibid. Therefore, to determine whether K.P. was eligible to attend the Hamilton Township public schools, it is necessary to determine whether one or both of her parents are domiciled in Hamilton.³

“[T]he domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning, and from which he has no present intention of moving.” In re Unanue, 255 N.J. Super. 362, 374 (Law Div. 1991) (quoting Kurilla v. Roth, 132 N.J.L. 213, 215 (Sup. Ct. 1944), aff’d, 311 N.J. Super. 589 (App. Div. 1998), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051 (1999)).

Eligibility under the education laws and regulations is framed as, in relevant part:

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

³ There was no evidence presented as to the domicile of K.P.’s mother, whether her parents are divorced, and/or whether they entered a custody agreement determining domicile for the purpose of education.

[N.J.A.C. 6A:22-3.1(a)(1). Emphasis added.]

It is not disputed that petitioner is domiciled in the District. In the absence of sufficient proof that K.P. does not live with her father or that he does not have custody, the relevant Code provision is clear. That K.P. spent a few nights in December 2022 at a non-parental residence in Princeton bears little weight in this regard.

Accordingly, I **FIND** that petitioner (K.P.'s father) is domiciled in the Township of Hamilton School District. I further **FIND** that, for purposes of N.J.A.C. 6A:22-3.1, K.P. is domiciled in the Township of Hamilton School District. Based on this, I **CONCLUDE** that K.P. is entitled to a free public education in the Township of Hamilton School District pursuant to N.J.A.C. 6A:22-3.1.

DECISION AND ORDER

Based on the foregoing findings of fact and conclusion of law, it is **ORDERED** that the relief is **GRANTED**. The decision of the Township of Hamilton School District Board is **REVERSED**. It is further **ORDERED** that respondent Hamilton Township Board of Education's counterclaim for tuition reimbursement is **DENIED**.


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 6, 2024

DATE



NICOLE T. MINUTOLI, ALJ

Date Received at Agency:

Date Mailed to Parties:

NTM/dw

APPENDIX

WITNESSES

For petitioner:

None

For respondent:

Dr. James Altobello

EXHIBITS

For petitioner:

None

For respondent:

- R-1 Petition of Appeal
- R-2 Cross-Petition
- R-3 March 23, 2023, letter from Board
- R-4 Published Tuition Rates for 2022–2023 school year
- R-5 Letter of January 9, 2024