

**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**

In this case on remand, *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.

On remand, the ALJ found, *inter alia*, that: after giving the petitioner a second opportunity to appear for a hearing, he once again failed to appear; based upon testimony and documentary evidence supplied by the Board, Ky.P. attended school in Hamilton Township for 55 days during the 2022-2023 school year while domiciled outside of the district; further, the cost of tuition for the 2022-2023 school year was \$81.03 per day, or \$14,586 per year for a third grade student. Accordingly, the ALJ concluded that the Board was entitled to payment from petitioner for Ky.P.'s tuition in the amount of \$4,456.65.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ on remand and adopted the October 15, 2024 Initial Decision as the final decision in this matter. Accordingly, the Board's counterclaim for tuition was granted and petitioner was ordered to pay the Board \$4,456.65 in tuition costs for Ky.P.'s period of 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.

419-24

OAL Dkt. No. EDU 04401-24 (EDU 04952-23 on remand)

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 and the Initial Decision of the Office of Administrative Law (OAL) on remand have been reviewed and considered. The parties did not file exceptions.

This matter concerns the Board's March 23, 2023, determination that Ky.P. does not reside in Hamilton Township and their demand for payment of tuition in the amount of \$4,456.65 for Ky.P.'s ineligible attendance at school in the district during the 2022-2023 school year.<sup>1</sup> Petitioner appealed the Board's determination but failed to prosecute his appeal at the OAL.

In February 2024, the Administrative Law Judge (ALJ) granted petitioner's appeal and dismissed the Board's counterclaim for tuition. In March 2024, the Commissioner rejected the Initial Decision, dismissed the petition of appeal for failure to prosecute, and remanded the

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<sup>1</sup> 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.

matter to the OAL to develop the record regarding the number of days of Ky.P.'s ineligible attendance and the per diem cost of tuition.

On remand, the ALJ gave petitioner a second opportunity to appear for a hearing, and he failed to do so. Based upon testimony and documentary evidence supplied by the Board, the ALJ found that Ky.P. attended school in Hamilton Township for 55 days during the 2022-2023 school year while domiciled outside of the district. The ALJ further found that the cost of tuition was \$81.03 per day, or \$14,586 per year for a third-grade student. Accordingly, the ALJ concluded that the Board was entitled to payment from petitioner for Ky.P.'s tuition in the amount of \$4,456.65.

The Commissioner concurs with the findings and conclusions of the ALJ on remand and adopts the October 15, 2024, Initial Decision as the final decision in this matter. "*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)*).

If 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." *N.J.A.C. 6A:22-6.2(a)*. Because petitioner failed to prosecute the appeal, the Commissioner shall assess tuition against petitioner for the period during which

Ky.P. was ineligible to attend school in the district “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)*.

Accordingly, the Board’s counterclaim for tuition is granted. Petitioner is hereby ordered to pay the Board \$4,456.65 in tuition costs for Ky.P.’s period of ineligible attendance.

IT IS SO ORDERED. <sup>2</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 13, 2024  
Date of Mailing: November 13, 2024

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<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



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

**INITIAL DECISION**

OAL DKT. NO. EDU 04401-24

AGENCY DKT. NO. 137-5/23

(ON REMAND EDU 04952-23)

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

Petitioner,

v.

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

Respondent.

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**K.P.**, petitioner, pro se

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

Record Closed: September 24, 2024

Decided: October 15, 2024

BEFORE **NICOLE T. MINUTOLI**, ALJ

## **STATEMENT OF THE CASE**

Petitioner appeals the determination of respondent, Township of Hamilton Board of Education (Board), that K.P. daughter<sup>1</sup> is not domiciled in the Township of Hamilton School District (District) and should be disenrolled and assessed back tuition of \$4,456.65 for the days of illegal attendance.

## **PROCEDURAL HISTORY**

Petitioner filed an appeal with the Department of Education ("the Department") on May 17, 2023. The Board filed an answer on June 5, 2023. The matter was transmitted to the Office of Administrative Law (OAL), where on June 5, 2023, it was filed as a contested case. N.J.S.A. 52:148-1 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.

Notice of the rescheduled conference on August 1, 2023, was sent to the parties through email on July 12, 2023. Both parties appeared for this conference, during which they 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.

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

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<sup>1</sup> For clarity, I will refer to K.P. parent as "petitioner" and K.P. minor child as "K.P. daughter." Also, 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 the 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 the petitioner to explain his nonappearance and for the Board to provide additional information supporting its counterclaim. The Board made its submission on January 9, 2024. When no explanation was received from the petitioner regarding his failure to appear, the record closed on January 16, 2024.

An initial decision reversing the Board's findings was issued on February 6, 2024. On March 15, 2024, the Commissioner of Education reversed the initial decision, dismissed the petitioner's residency appeal, and remanded the matter to develop the record on the number of days of K.P.'s daughter's ineligible attendance and the per diem cost of tuition.

On June 4, 2024, the parties appeared for an in-person hearing. At that time, the petitioner advised that he has been residing in Hamilton for four years and that K.P. daughter resides with him. The petitioner further advised that as a truck driver, his schedule changes, and when he is scheduled to work overnights, K.P.'s daughter must stay with her mother, who resides in Ewing. The petitioner's schedule changes randomly, and K.P.'s daughter did not permanently reside with the mother but stayed with her temporarily.

Based upon the petitioner's assertions, both parties agreed to appear at a subsequent hearing on the residency issue. Notice of the rescheduled hearing for September 24, 2024, was emailed to the parties on June 5, 2024. The Board appeared for the hearing, but the petitioner failed to appear and failed to notify my office in advance

or request an adjournment. The hearing was held on September 24, 2024, testimony was taken, and the record was closed.

### **FINDINGS OF FACT**

Based on the testimony of Dr. James Altobello, District Director of Operations, and the documentary submitted by the Board, I **FIND** the following as **FACTS**<sup>2</sup>:

1. K.P. daughter began attending school in the District in September 2022 as a third-grade general education school student for the 2022-2023 school year.
2. Thereafter, the respondent received information that K.P. daughter was not residing in Hamilton but was residing in Princeton Township.
3. The Board engaged the services of Tri-Shield Security and Protection to investigate K.P. daughter's actual residence.
4. Surveillance was conducted at the Princeton Township address. After a complete investigation, it was determined that K.P. daughter resided at the Princeton address with her brother's mother and did not reside in Hamilton Township.
5. On February 6, 2023, a residency hearing was conducted before the Board. The petitioner did not attend the residency hearing or claim he did not receive notice.
6. On February 22, 2023, the Board determined that K.P. daughter 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 the school year 2022-2023.

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<sup>2</sup> Although not required, I am restating the facts from the remanded EDU 04952-23, derived from the Board's Counterpetition for an Order Assessing Tuition, marked R-2.



7. By letter dated March 23, 2023, the Board notified the petitioner of its decision that K.P. daughter was ineligible to attend the District schools and of his right to appeal. This letter was sent to the petitioner at both the Hamilton and Princeton Township addresses via regular mail and Certified Mail, Return Receipt Requested.
8. Between March 23, 2023, through June 21, 2023, K.P. daughter attended school in the District for fifty-five days, though not domiciled in the District.
9. The annual per pupil cost for a general education school student in third grade in the District is \$14,586.
10. The District was in session for 180 days during the 2022-2023 school year; 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.
11. K.P. daughter 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.

### **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. The 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), aff'd, 311 N.J. Super. 589 (App. Div. 1998), certif. denied, 157 N.J. 541 (1998), cert. denied, 526 U.S. 1051 (1999).

The acts, statements and conduct of the individual, as viewed in the light of all the circumstances, determine a person's true intent. Collins v. Yancey, 55 N.J. Super. 514, 521 (Law Div. 1959). The parent has the burden of proof by a preponderance of the evidence. N.J.S.A. 18A:38-1(b)(2).

The record reflects that K.P. daughter attended fifty-five days of school within the District for the 2022-2023 school year while domiciled outside of the District. Accordingly, I **CONCLUDE** that K.P. daughter was not entitled to a free public education in the District. 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 based on 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 uncontested record reflects that the actual cost of K.P.'s attendance in-district was \$81.03 per day, equaling \$14,586 per annum. Accordingly, I **CONCLUDE** that the Board is entitled to reimbursement for tuition by the petitioner in the amount of \$4,456.65.

### **ORDER**

For the reasons above, I hereby **ORDER** that petitioner K.P. pay respondent Hamilton Township Board of Education tuition in the total amount of \$4,456.65 for unauthorized attendance in the District schools for the abovementioned periods.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to **ControversiesDisputesFilings@doe.nj.gov** or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.

October 15, 2024

DATE



**NICOLE T. MINUTOLI, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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NTM/dw

**APPENDIX**

**WITNESSES**

**For petitioner:**

None

**For respondent:**

Dr. James Altobello

**EXHIBITS**

**For petitioner:**

None

**For respondent:**

R-1 Published Tuition Rates for 2022-2023 school year

R-2 Counter petition for tuition from EDU 04952-23 (remanded matter)