

EDU #436-05  
C #435-05  
SB # 55-05

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF HAMILTON, :  
MERCER COUNTY, :  
PETITIONER-RESPONDENT, : STATE BOARD OF EDUCATION  
V. : DECISION  
C.A. AND B.Z., :  
RESPONDENTS-APPELLANTS. :

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Decided by the Acting Commissioner of Education, December 5, 2005

For the Petitioner-Respondent, Destribats, Campbell, DeSantis, Magee & Staub (Dennis DeSantis, Esq., of Counsel)

For the Respondents-Appellants, C.A. and B.Z., pro se

This matter had its origins in September 2004 when the Board of Education of the Township of Hamilton (hereinafter "Board") determined that minor children A.A., N.A. and J.A. were not domiciled in Hamilton Township and therefore not entitled to a free public education in the district. J.W.A., the father of A.A., N.A. and J.A., filed a petition of appeal with the Commissioner of Education challenging that determination, and the Board filed a counterclaim seeking tuition from J.W.A. for the period of his children's ineligible attendance. A hearing was scheduled in the Office of Administrative Law, and, after J.W.A. failed to appear, the Administrative Law Judge ("ALJ") concluded based on evidence presented by the Board that the children were not domiciled in Hamilton Township. He therefore recommended that the Commissioner dismiss J.W.A.'s petition and direct him to pay tuition to the Board. The Commissioner adopted

the ALJ's recommended decision and directed that J.W.A. compensate the Board for tuition at the per diem rate of \$48.70 per child for the 2004-05 school year. J.W.A., on behalf of minor children, A.A., N.A. and J.A. v. Board of Education of the Township of Hamilton, decided by the Commissioner of Education, April 29, 2005.<sup>1</sup>

While those proceedings were pending, the Board filed the instant petition against C.A. and B.Z. (hereinafter "appellants"), the mother and grandmother of A.A., N.A. and J.A., seeking tuition and counsel fees. On October 28, 2005, after the appellants failed to appear at a scheduled hearing, the ALJ recommended that the Commissioner direct them to pay tuition to the Board in the amount of \$48.70 per day per child for the 154 days of A.A.'s, N.A.'s and J.A.'s ineligible attendance in the district during the 2004-05 school year. He recommended denying the Board's request for counsel fees. On December 5, 2005, the Acting Commissioner adopted the ALJ's decision and directed the appellants to pay tuition to the Board in the amount of \$22,499.40.

On December 19, 2005, the appellants filed the instant appeal to the State Board from the Acting Commissioner's decision of December 5, 2005.<sup>2</sup> They also seek to supplement the record on appeal with several documents purporting to show that the

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<sup>1</sup> We note that J.W.A. did not file an appeal to the State Board from that decision. See n.2 *supra*.

<sup>2</sup> We note that J.W.A., who was not a party to this matter, signed the notice of appeal along with appellants C.A. and B.Z. By letter dated January 10, 2006, the Director of the State Board Appeals Office inquired as to whether it was J.W.A.'s intent to file an appeal from the Commissioner's decision of April 29, 2005 in J.W.A., on behalf of minor children, A.A., N.A. and J.A., supra. J.W.A. was given until January 23, 2006 to advise as to whether he intended to appeal that decision, and, if so, to submit a letter setting forth the circumstances of his late filing. See N.J.S.A. 18A:6-28 (a notice of appeal to the State Board of Education must be taken within 30 days after the decision appealed from is filed). Despite being given the opportunity to do so, J.W.A. did not indicate his intent to appeal the Commissioner's decision of April 29, 2005. Moreover, the only decision provided by the appellants with their notice of appeal and appeal brief, see N.J.A.C. 6A:4-1.7(c) and 6A:4-1.14(a), was the Acting Commissioner's determination of December 5, 2005. Hence, the appeal before us is limited to the Acting Commissioner's December 5, 2005 decision against appellants C.A. and B.Z.

children live in Hamilton Township with appellant B.Z. In the papers submitted on appeal, B.Z. states that the children had been living with her in Hamilton Township since 1999 and that appellant C.A., her daughter, had misinformed her that the Board's petition against them had been dismissed. B.Z. indicates that C.A. had "severe emotional problems as well as drug and alcohol abuse." Motion to Supplement, at 1. B.Z. assumed "that since [C.A.] has several warrants [sic] for her arrest for robbery, theft of an automobile, etc. she did not wish to appear in court. She is still on the run from the law and is unable to be located or reached." Reply Brief, at 2.

Initially, we grant the appellants' motion to supplement the record, and, after a thorough review of the record, including the supplemental materials, we set aside the Acting Commissioner's decision and, in the interests of justice, remand this matter to the Acting Commissioner for such expedited proceedings as are necessary to determine the merits of the Board's petition. Taking into consideration the appellants' status as pro se litigants and the circumstances presented on appeal by appellant B.Z., we conclude that the appellants have offered sufficient justification for providing them with the opportunity to present a defense to the Board's claim. See Siwiec v. Fin. Res., Inc., 375 N.J. Super. 212 (App. Div. 2005). We stress in granting the motion to supplement that we make no judgment with regard to the substantive evidentiary value of the supplemental materials, which must be tested under the applicable rules during the proceedings on remand.

We do not retain jurisdiction.

June 7, 2006

Date of mailing \_\_\_\_\_