

#151-16 (OAL Decisions: Not yet available online)

K.B., ON BEHALF OF MINOR CHILDREN, A.U., G.U., B.U., A.U., and T.U.,	:	
	:	
PETITIONER,	:	
V.	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF BRANCBURG, SOMERSET COUNTY,	:	
RESPONDENT,	:	COMMISSIONER OF EDUCATION
AND	:	DECISION
BOARD OF EDUCATION OF THE TOWNSHIP OF BRANCBURG, SOMERSET COUNTY,	:	
PETITIONER,	:	
V.	:	
C.U.,	:	
RESPONDENT.	:	

SYNOPSIS

In these consolidated matters, petitioner K.B. – on behalf of her five minor children – appealed the determination of the respondent Board that her children did not reside in Branchburg when they attended the Township of Branchburg Schools from November 2014 to June 2015, and therefore petitioner owed tuition for the period of ineligible attendance; the Board subsequently filed a petition, consolidated herein, seeking tuition reimbursement from K.B.’s ex-husband, C.U. – the father of the five children. C.U. never submitted an answer to the Board’s petition.

The ALJ found, *inter alia*, that: In 2012, K.B. and C.U. entered into a joint legal and physical custody agreement which stipulated that K.B. would be the parent of primary residence for purposes of determining school districts; at the time of the custody agreement, both parents resided in Branchburg; in November 2014, C.U. relocated his domicile to Bridgewater Township; as of the beginning of the 2014-2015 school year, all five children remained enrolled in Branchburg schools, but – commencing no later than November 2014 – all of the children began residing continuously and exclusively with C.U. at his residence in Bridgewater; a court order dated February 4, 2013 sets forth a new custody arrangement, whereby legal custody is shared between the parents and physical custody continues with the father, C.U.; the children remained enrolled in Branchburg schools until the end of the school year in June 2015, when they were withdrawn; K.B.’s domicile changed in November 2014 when she relocated to a trailer in Long Valley; there is ample evidence that petitioner was not domiciled in Branchburg from November 2014 to June 2015; and the testimony of K.B. was lacking in credibility, as she was not forthcoming with information about her actual domicile as of November 2014. The ALJ concluded that petitioner has failed to prove by a preponderance of credible evidence that she was domiciled in the Branchburg Township School District from November 2014-2015; further, C.U. has failed to file an answer to the Board’s petition despite numerous notices; accordingly, the Board’s request for a default judgment was granted. The ALJ ordered K.B.’s petition dismissed and granted the Board’s default order for tuition reimbursement.

The Commissioner concurred with the ALJ’s findings and conclusions and adopted the Initial Decision of the OAL as the final decision in this matter. The Commissioner directed K.B. and C.U. to reimburse the Board for tuition in the amount of \$ 54,966.16.

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.

April 21, 2016

OAL DKT. NOS. EDU 07023-15 AND EDU 13033-15 (CONSOLIDATED)  
AGENCY DKT. NOS. 88-4/15 AND 110-5/15

K.B., ON BEHALF OF MINOR CHILDREN, :  
A.U., G.U., B.U., A.U., and T.U., :  
 :  
 PETITIONER, :  
 :  
 V. :  
 :  
 BOARD OF EDUCATION OF THE TOWNSHIP :  
 OF BRANCBURG, SOMERSET COUNTY, :  
 :  
 RESPONDENT, : COMMISSIONER OF EDUCATION  
 :  
 AND : DECISION  
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 BOARD OF EDUCATION OF THE TOWNSHIP :  
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 C.U., :  
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 RESPONDENT. :  
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The record of these consolidated matters and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner K.B. filed exceptions and the Board filed a reply thereto.<sup>1</sup>

Upon such review, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that K.B. failed to sustain her burden of establishing that she was a domiciliary of Branchburg from November 2014 to June 2015. The Commissioner further agrees with the ALJ's conclusion that the minor children were, therefore, not entitled to a free public education in the District's schools during this time.

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<sup>1</sup> Petitioner K.B.'s exceptions were not timely filed in accordance with *N.J.A.C.* 1:1-18.4, so they were not considered by the Commissioner. As K.B.'s exceptions were not considered, the Board's reply was also not considered.

Additionally, the Commissioner concurs with the Administrative Law Judge's (ALJ) finding that respondent C.U. is in default due to his failure to file an answer or otherwise respond to the petition. The Commissioner notes that C.U. was directed to file an answer on numerous occasions – including May 14, June 9, and August 7, 2015 – and was informed that if he failed to do so, each count in the petition would be deemed admitted and the matter may be decided on a summary basis pursuant to *N.J.A.C. 6A:3-1.5(e)*.<sup>2</sup> C.U. did not file an answer, nor did he appear for any telephone conference or hearing at the OAL. As such, the Board's claim that C.U. should be assessed tuition for the period of his children's ineligible attendance in the District is deemed admitted.

Pursuant to *N.J.S.A. 18A:38-1b*, the Commissioner shall assess tuition against K.B. and C.U. for the time period during which the minor children were ineligible to attend school in Branchburg. Therefore, the Board is entitled to tuition reimbursement in the total amount of \$54,966.16 (\$78.59 per day for 139 days for A.U., G.U., B.U., and T.U. and \$81.08 per day for 139 days for A.U.) for the time period from November 2014 to June 2015.

Accordingly, the Initial Decision of the OAL is adopted – for the reasons expressed therein – as the final decision in this matter. K.B. and C.U. are directed to reimburse the Board in the amount of \$54,966.16 for tuition costs incurred during the time period that the minor children were ineligible to attend school in Branchburg.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: April 21, 2016

Date of Mailing: April 21, 2016

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<sup>2</sup> The Commissioner transmitted the case against C.U. (Agency Dkt. No. 110-5/15) to the OAL without an answer because it was directly related to Agency Docket Number 88-4/15, which was scheduled for a hearing.

<sup>3</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*).