

26-17

A.M., on behalf of minor child, G.M., :
 PETITIONER, : COMMISSIONER OF EDUCATION
 V. : DECISION
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF MINE HILL, :
 MORRIS COUNTY, :
 RESPONDENT. :

SYNOPSIS

In September 2016, *pro se* petitioner appealed the determination of the respondent Board that his child, G.M., is not entitled to a free public education in Mine Hill schools for the 2016-2017 school year. Petitioner contended that he resided in Mine Hill and has joint custody of G.M.; accordingly, his daughter should have been allowed to enroll in Mine Hill’s preschool program in August 2016. The Board argued that G.M. is not legally domiciled within the school district, and filed a counterclaim for tuition.

The ALJ attempted to convene a telephone conference in this matter, but had difficulty contacting the petitioner. Subsequently, the ALJ’s office was advised that the petitioner had moved and that G.M. would not be attending preschool in Mine Hill; the school district confirmed that G.M. is not presently enrolled. The ALJ concluded that it is appropriate to dismiss without prejudice any relief sought by respondent in its cross-claim. Accordingly, the ALJ deemed the petition withdrawn without prejudice, and the counterclaim dismissed without prejudice.

Upon review, 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.

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.

January 23, 2017

OAL DKT. NO. EDU 15090-16
AGENCY DKT. NO. 234-9/16

A.M., on behalf of minor child, G.M., :
PETITIONER, : COMMISSIONER OF EDUCATION
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RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner adopts the Administrative Law Judge's (ALJ) recommended decision for the reasons expressed therein. Accordingly, the petition and the cross-claim are dismissed without prejudice.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2017

Date of Mailing: January 23, 2017

*This decision may be appealed to the Superior Court, Appellate Division, 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 15090-16

AGENCY DKT. NO. 234-9/16

A.M. o/b/o G.M.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF MINE HILL, MORRIS COUNTY**

Respondent.

A.M. appearing pro se

Marc H. Zitomer, Esq., for respondent Mine Hill Board of Education (Schenck
Price Smith & King, attorneys)

Record Closed: December 1, 2016

Decided: December 9, 2016

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

A.M. appeals the determination of the Board of Education of the Township of Mine Hill (District) that his daughter G.M. is not entitled to a free public education in the Board's schools because she was not domiciled in the district for the 2016-2017 school year. The Board has filed a counterclaim seeking A.M.'s payment of tuition for the

number of days G.M. attended the District's schools. A.M. contends that he has joint shared custody of G.M. and that her placement in Mine Hill is appropriate and lawful.

The District refused to allow petitioner to register his four-year-old daughter at the Canfield Elementary School as a new preschool student in or about late August 2016. A.M. and his ex-wife live in different municipalities but A.M. alleges he has physical custody 50% of the time and joint legal custody, and thus maintains that he had every right to register his child in the Mine Hill District. A.M. filed his petition of appeal directly with the Commissioner of Education on September 6, 2016. The Board filed its answer and counterclaim on September 30, 2016. The matter was then transmitted to the Office of Administrative Law for determination as a contested case on October 5, 2016.

I attempted to convene a telephone case management conference on the matter but had some difficulty with the contact information. Our office was advised that A.M. had moved and that G.M. would not be attending preschool in the District. Nevertheless, to date petitioner has not memorialized this action in writing. I am satisfied that he was sincere in his decision to not pursue this appeal in light of the confirmation from the District that G.M. is not presently enrolled. Furthermore, in light of the fact that G.M. might not have attended much if any days of preschool in the District, and in light of the withdrawal of the underlying claim, I **CONCLUDE** that it is appropriate to dismiss without prejudice any relief sought by respondent in its cross-claim.

ORDER

Accordingly, it is **ORDERED** that the petition of A.M. on behalf of G.M. is hereby deemed withdrawn without prejudice should he seek to register his daughter. It is further **ORDERED** that the cross-claim of Mine Hill Board of Education for any tuition that might be due and other relief should it have been determined that A.M. did not properly reside in the District is also deemed dismissed without prejudice to re-filing.

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

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER FOR THE DEPARTMENT OF EDUCATION**, which by law is authorized to make a final decision in this matter. If the Board of Trustees does not adopt, modify or reject this decision 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.



December 9, 2016

DATE

GAIL M. COOKSON, ALJ

Date Received at Agency:

12/9/16

Mailed to Parties:

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

None

For Respondent:

None

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

None

For Respondent:

R-1 Letter from Marc H. Zitomer, dated December 8, 2016