

New Jersey Commissioner of Education

Final Decision

K.S., on behalf of minor child, L.W.,

Petitioner,

v.

Board of Education of the Borough of
Mount Ephraim, Camden County,

Respondent.

Synopsis

Pro se petitioner appealed the determination of the respondent Board that her minor child was not entitled to a free public education in Mount Ephraim schools during the period from October 1, 2022 through the end of the 2022-2023 school year. The Board contended that L.W. was not residing at the Mount Ephraim address provided by petitioner and sought tuition reimbursement for the period of ineligible attendance.

The ALJ found, *inter alia*, that: at the start of the 2022-2023 school year, K.S. had two children attending school in Mount Ephraim; after an investigation determined that K.S. and her children were not living at the address provided during registration, petitioner withdrew her older child and enrolled him in the school district where the family resides; petitioner subsequently filed a residency petition asserting that her younger child, L.W., was eligible to attend preschool in Mount Ephraim based on an agreement she had reached with L.W.'s paternal grandfather to keep L.W. in his home in Mount Ephraim during the week through the end of the school year; pursuant to *N.J.S.A. 18A:38-1(b)(1)*, in order for L.W. to be eligible to attend school from his grandfather's Mount Ephraim address free of charge, a formal agreement must be in place to show that the grandfather is supporting L.W. gratis, has assumed all personal obligations for L.W. relative to school requirements, and intends to keep and support the child gratuitously for a period of time exceeding the school term. As petitioner failed to show evidence of any such agreement, the ALJ determined that she did not sustain her burden of establishing that she was a domiciliary of Mount Ephraim from October 1, 2022, through the end of the 2022-2023 school year. Accordingly, the ALJ concluded that the Board is entitled to reimbursement for the cost of educating L.W., in the sum of \$17,227, for the 161 days L.W. attended school during the 2022-2023, school year.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion and adopted the Initial Decision of the OAL as the final decision in this matter. Petitioner was directed to reimburse the Board in the amount of \$17,227 for tuition costs incurred during the time period that L.W. was ineligible to attend school in Mount Ephraim. The petition of appeal was dismissed.

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.

238-23

OAL Dkt. No. EDU 02724-23

Agency Dkt. No. 59-3/23

New Jersey Commissioner of Education

Final Decision

K.S., on behalf of minor child, L.W.,

Petitioner,

v.

Board of Education of the Borough of
Mount Ephraim, Camden County,

Respondent.

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

Upon review, the Commissioner concurs with the finding of the Administrative Law Judge (ALJ) that petitioner failed to sustain her burden of establishing that she was a domiciliary of Mount Ephraim from October 1, 2022, through the end of the 2022-2023 school year. The Commissioner further concurs with the ALJ's findings that L.W.'s paternal grandfather, a resident of Mount Ephraim, was not supporting L.W. gratis as if L.W. was his own child and that L.W. was only temporarily residing with his paternal grandfather for the sole purpose of attending school in Mount Ephraim. L.W. was, therefore, not entitled to a free public education in Mount Ephraim during this time.

Pursuant to *N.J.S.A. 18A:38-1(b)*, the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in

Mount Ephraim. Therefore, respondent is entitled to tuition reimbursement in the amount of \$17,227 (161 school days x \$107 per pupil tuition rate per day) for the time period from October 1, 2022 through June 15, 2023.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is directed to reimburse respondent in the amount of \$17,227 for tuition costs incurred during the time period that L.W. was ineligible to attend school in Mount Ephraim. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 7, 2023
Date of Mailing: August 9, 2023

¹ 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 02724-23

AGENCY DKT. NO. 59-3/23

K.S. ON BEHALF OF MINOR CHILD,

L.W.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF MOUNT EPHRAIM, CAMDEN COUNTY,**

Respondent.

K.S., on behalf of minor child, L.W, petitioner, pro se

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

Record Closed: June 30, 2023

Decided: July 6, 2023

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioner K.S., the mother of minor child L.W., appeals the determination by the respondent Board of Education (Board) of the Borough of Mount Ephraim, Camden County (Mt. Ephraim) that L.W., a preschool student, could not attend preschool within the Mount Ephraim Public School District (District) because he did not reside in Mount Ephraim. The Board alleged that the minor child L.W. was not residing at the address provided by the petitioner and seeks repayment of tuition from October 1, 2022, until the

last day of the 2022-2023 school year. At issue is whether L.W. was entitled to be enrolled in the district for purposes of receiving a thorough and efficient public education free of charge for the 2022-2023 school year, pursuant to N.J.S.A. 18A:38-1.

PROCEDURAL HISTORY

On February 13, 2023, after a hearing, the Board voted and determined that L.W. was ineligible to attend preschool in the District. On March 7, 2023, K.S. filed a pro se residency appeal. On March 24, 2023, the Board filed an answer and counter petition for an order assessing tuition. The Department of Education Office of Controversies and Disputes transmitted this matter to the Office of Administrative Law (OAL) where it was filed on March 28, 2023, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The hearing was conducted via ZOOM platform on May 26, 2023. The record closed on June 30, 2023, after receipt of closing summations.

FACTUAL DISCUSSION AND FINDINGS

The issues in dispute are whether L.W. lived with his parents and brother outside of the geographic area served by District, during the 2022-2023 school year and if so, the amount of tuition owed by petitioner to respondent for the 2022-2023 school year.

It is undisputed and I so **FIND** that as the start of the 2022-2023, K.S. had two children attending school in District. After an investigation, the District learned that K.S. and her children were not living at the Baird Avenue address in Mount Ephraim. In January 2023, the District informed K.S. of its preliminary determination of ineligibility affecting her children. K.S. requested a hearing before the Board. Prior to the Board meeting on February 13, 2023, K.S. withdrew her older son, C.D., and transferred him to the school district where the family resides.

The Board met on February 13, 2023. K.S. presented her appeal in executive session. Her justification for keeping L.W. in District was because her new school district

did not offer a preschool program. After the hearing in executive session, the Board voted that L.W. as a non-resident was not eligible to attend preschool in the District.

K.S. appealed the Board's determination on the grounds that she reached an agreement with L.W.'s paternal grandfather, who resides at the Baird Avenue address in Mount Ephraim, to keep L.W. during the week, until the end of the school year. (R-2.)

At the hearing, respondent presented testimony from Superintendent, Michael Hunter; K.S. testified on behalf of petitioners. The following is not a verbatim recitation of the testimony but a summary of the testimonial and documentary evidence that I found relevant to the above issues.

TESTIMONY

Michael Hunter is the Superintendent and the Principal of the Middle School. At the beginning of the 2022-2023 school year, the District performed a residency audit for all students enrolled in kindergarten, third grade, and sixth grade. As K.S.'s older son, C.D., was enrolled in sixth grade in the Middle School, he was part of the audit. Although K.S. provided documentation as to an address in Mount Ephraim, there were other indications that C.D. was not residing at the address provided.

As a result, Mr. Hunter retained Reese Investigations to determine if C.D. was residing within the District. (R-3.) As a result of the investigation, Mr. Hunter learned that K.S. signed a lease on September 22, 2022, for an apartment in Oaklyn¹, where she resided with her children. The investigator photographed K.S. and her two sons leaving the Collingswood apartment at 7:36 a.m. and entering her vehicle. The two boys were wearing backpacks. (R-3.)

In 2019, Mount Ephraim was awarded a preschool expansion grant to institute a full day program. Due to the popularity of the program, admission is by lottery based on

¹ Respondent believed that petitioner was residing in Oaklyn, which shares a border with Collingswood. At the hearing, petitioner confirmed that her apartment is in Collingswood.

registration requirements. The preschool program is only open to Mount Ephraim residents; it is not available by tuition or through a school choice voucher. K.S.'s younger son, L.W., attended the preschool program.

K.S. voluntarily withdrew C.D. from the District. The District completed the transfer card for C.D.'s new school which showed that C.D. was no longer a resident of Mount Ephraim. As to her younger son, L.W., K.S. advised Mr. Hunter that she was not withdrawing him because she reached an agreement with Rich, L.W.'s paternal grandfather, who agreed to keep L.W. during the week so he could attend school. (R-2.)

There was no dispute that K.S. was living outside of Mount Ephraim. The original address used at the start of the school year was the address for Rich, L.W.'s paternal grandfather.

K.S. testified on her own behalf. K.S.'s resides with L.W.'s father, but they are not married. Her older son C.D. must live with her pursuant to a custody agreement.

Rich resides in Mount Ephraim. After the Board's decision, Rich agreed to keep L.W. so he could finish out the school year in his preschool program. K.S. acknowledged that despite the living arrangement, L.W. visits his parents and brother, and sleeps overnight. The arrangement with Rich is only temporary until the end of the school year.

After consideration of the testimony and the documents in evidence, I **FIND** the following as additional **FACTS**:

After moving outside the District, K.S. wanted L.W. to continue in the preschool program in Mount Ephraim because there was no preschool option in her new school district. After learning that non-residents were not eligible to attend the preschool program, K.S. entered into an agreement with Rich, L.W.'s grandfather. Because Rich was a Mount Ephraim resident, K.S. believed L.W. could live with Rich during the week until the end of the school year to retain his eligibility.

L.W.'s parents remained financially responsible for their son's health and welfare.

LEGAL ANALYSIS AND CONCLUSION

N.J.S.A. 18A:38-1, 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, for a student to receive a free education). Although L.W. was not of school age, he was receiving a free education at a public-school preschool program only open to registered children domiciled within the school district.

A person who 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, and a child’s domicile is normally that of his or her parents. 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). 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.), 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). Petitioner, K.S., has the burden of proof by a preponderance of the evidence that she meets the residency eligibility requirements. N.J.S.A. 18A:38-1(b)(2).

The domicile of an unemancipated child is the domicile of the parent, custodian, or guardian. P.B.K. ex rel. minor child E.Y. v. Bd. of Educ. of Tenafly, 343 N.J. Super. 419, 427 (App. Div. 2001). Thus, a child would routinely attend school in the district where his or her parents live. There is no dispute that L.W.’s parents live outside the geographic boundaries of the District.

To avoid the issue of L.W.'s domicile, K.S. testified that Rich, L.W.'s paternal grandfather, agreed to keep him at his house so L.W. could finish preschool in Mount Ephraim. K.S.'s testified that she made an agreement with Rich to keep L.W. in preschool in Mount Ephraim. She offered no other terms of the agreement. For such an agreement to be valid, K.S. must meet the requirements set forth in N.J.S.A. 18A:38-1(b)(1):

Any person who is kept in the home of another person domiciled within the school district and is supported by such other person gratis as if he were such other person's own child, upon filing by such other person with the secretary of the board of education of the district, is so required by the board, a sworn statement that he is domicile within the district and is supporting the child gratis and will assume all personal obligations for the child relative to school requirements and that he intends so to keep and support the child gratuitously for a longer time than merely through the school term. . . . and upon filing by the child's parent . . . with the secretary of the board of education a sworn statement that he is not capable of supporting or providing care for the child due to a family or economic hardship and that the child is not residing with the resident of the district solely for the purpose of receiving a free public education within the district.

The above statute provides affirmative obligations for both Rich and K.S. Rich did not testify. K.S. offered no testimony as to her financial arrangement with Rich. She provided no documentary evidence as to the terms of their agreement. Accordingly, I cannot **CONCLUDE** on the record before me that Rich is supporting L.W. gratis as if L.W. was his own child. I further **CONCLUDE** that there was no record of any contact by either K.S. or Rich to the Board regarding the financial terms of this agreement or Rich's assumption of all personal obligations for L.W. K.S. testified that she attends parent/teacher conferences and receives emails from the District. As to L.W.'s parents' obligations, there is nothing in the record to show that they lack the financial means to provide for the support of their son. Based on the record herein, I **CONCLUDE** that L.W. is only residing with Rich to receive a free public preschool program in Mount Ephraim, in violation of N.J.S.A. 18A:38-1(b)(1).

Accordingly, in light of all of the facts and circumstances, I **CONCLUDE** that L.W. is not entitled to attend the free public preschool program in the District. I **CONCLUDE** petitioner failed to satisfy the burden of proving that L.W. is domiciled at Baird Avenue. I further **CONCLUDE** that K.S.'s agreement with Rich must fail because it is a temporary situation to avoid the residency requirement and allow L.W. to attend preschool in the District until the end of the school year.

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:

[F]or the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be 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 and shall be collected in the manner in which orders of the commissioner are enforced.

N.J.A.C. 6A:22-6.3(a) provides that,

Tuition assessed pursuant to this section shall be calculated on a per-student basis for the period of a student's ineligible enrollment, up to one year, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23A-17.1. The individual student's record of daily attendance shall not affect the calculation.

As set forth above, a school board is entitled to recover tuition from a parent or guardian of a child found ineligible to attend a school in its district. L.W. was not entitled to a free public education in the Mount Ephraim School District because he did not meet eligibility requirements. Annual tuition cost is \$19,325, with a per diem cost of \$107. Since October 1, 2022, L.W. attended 161 days as a Mt Ephraim student while not being domiciled in Mt. Ephraim. Therefore, petitioners owe tuition to respondent in the amount of \$17,227 (161 school days x \$107 per pupil tuition rate per day). Therefore, I further **CONCLUDE** that respondent is entitled to reimbursement from the parents of L.W. for the cost of providing an education to their son, L.W., in the sum of \$17,227, for the 161 days L.W. attended school during the 2022-2023, school year.

ORDER

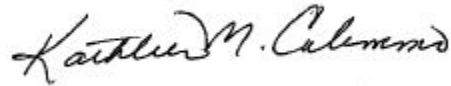
I **ORDER** that the decision of respondent Board of Education of the Borough of Mount Ephraim determining L.W. ineligible for the free public preschool program in the Mount Ephraim School District during the 2022-2023 school year is **AFFIRMED** and the pro se residency appeal of petitioners K.S. on behalf of L.W. is **DISMISSED**.

Further, I **ORDER** that L.W.'s parents shall be responsible for tuition reimbursement to respondent in the amount of \$17,227.

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.



July 6, 2023 _____

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/tat

APPENDIX

WITNESSES

For Petitioners:

K.S.

For Respondent:

Michael Hunter

EXHIBITS

For Petitioner:

None

For Respondent:

- R-1 Final Ineligibility Notice
- R-2 Email Chain of March 11, 2023
- R-3 Investigator's Report and Photos