

New Jersey Commissioner of Education

Final Decision

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

Petitioner,

v.

Board of Education of the City of Union City,
Hudson County,

Respondent.

Synopsis

Petitioner filed a pro se petition challenging the determination of the respondent Board that his minor child, K.S., was not eligible to receive a free public education in respondent's school district. Petitioner asserted that he and his son were residing with a family friend in Union City while the child's mother, who lives in Jersey City, was having personal issues. K.S. does not have a custody order for his son. The Board contends that K.S. was unable to provide sufficient proof of residency in the District, and filed a counterclaim for tuition for the period from the beginning of the 2022-23 school year through January 31, 2023.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A. 18A:38-1*, public schools are free to any person over five and under twenty five years of age who is domiciled within the school district; pursuant to *N.J.A.C. 6A:22-6.2.*, if a student does not have a right to attend the school district, the Commissioner may assess tuition; in this case, the Board sent Notice of Final Determination of Ineligibility to the minor child's mother on November 1, 2022; the Board received an appeal of this determination on November 21, 2022, filed by K.S., the father of K.S.; petitioner supplied no compelling proof of domicile in Union City despite requests to produce required documentation of residency from the beginning of the school year until January 31, 2023; documents submitted as proof of residency included unsigned lease agreements, a student registration with the child's mother listed at the Union City address but with a Jersey City driver's license, and two utility bills with the exact same information but one with the mother's name and the other with another student's parent's name; no custody order for either parent was presented. The ALJ concluded that K.S. was not domiciled in Union City during the time period at issue; therefore, his son was not eligible to attend school in the District. Accordingly, the ALJ ordered petitioner to pay the Board tuition in the amount of \$10, 516.52 for the period of K.S.'s ineligible attendance from September 6, 2022 through January 31, 2023.

Upon review, the Commissioner concurred with the ALJ that petitioner failed to sustain his burden of establishing that he was domiciled in Union City during the time period at issue here. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, with modification with respect to the final tuition calculation. Petitioner was directed to reimburse the Board in the amount of \$11,202.38 for tuition costs incurred during the time period in which K.S. was ineligible to attend school in Union City. The petition 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.

New Jersey Commissioner of Education
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Petitioner,

v.

Board of Education of the City of Union City,
Hudson County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the Board pursuant to *N.J.A.C. 1:1-18.4*. The petitioner did not file a reply.¹

In this residency matter, the Administrative Law Judge (ALJ) found that the Board met its burden of demonstrating that petitioner was not domiciled in Union City from the beginning of the 2022-23 school year through January 31, 2023, and the minor child was therefore not entitled to a free education in the District during that time.² The ALJ further found that the Board is entitled to tuition reimbursement in the amount of \$114.31 per day for 92 school days, from September 6, 2022 through January 31, 2023, totaling \$10,516.52.

In its exceptions, the Board requests that the Commissioner include an extra six days of tuition in the final calculation of tuition reimbursement, representing the number of days from January 31, 2023, until the minor child was removed from the district.³

¹ The Commissioner was not provided with a transcript of the January 30, 2023 hearing.

² The Commissioner notes that, pursuant to *N.J.S.A. 18A:38-1b* and *N.J.A.C. 6A:22-6.2*, the burden of proof falls on the petitioner, not the Board.

³ The Board also requests two modifications: (1) indicating that petitioner's utility bill was identical to that of another student, rather than to another bill of petitioner's; and (2) finding that the lease provided to the Board

Upon review, the Commissioner concludes that petitioner failed to sustain his burden of establishing that he was a domiciliary of Union City from the beginning of the 2022-23 school year through January 31, 2023. As such, the Commissioner finds that the minor child was not entitled to a free public education in the District's schools during that time.

Pursuant to *N.J.S.A. 18A:38-1b*, the Commissioner shall assess tuition against petitioner for the time period during which the minor child was ineligible to attend school in Union City. Therefore, the Board is entitled to tuition reimbursement in the amount of \$11,202.38, representing 92 school days from the beginning of the 2022-23 school year through January 31, 2023, at \$114.31 per day, plus an additional 6 days until the child was disenrolled from the District.

Accordingly, the Initial Decision of the OAL is modified with respect to the final tuition calculation. Petitioner is directed to reimburse the Board in the amount of \$11,202.38 for tuition costs incurred during the time period in which K.S. was ineligible to attend school in Union City. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁴


ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 23, 2023
Date of Mailing: March 24, 2023

was the child's mother's and not his father's. The Commissioner notes that while these requested modifications may be accurate, they are minor details that are not pertinent to the final outcome of this case.

⁴ 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 11086-22

AGENCY DKT. NO. 321-11/22

K.S. ON BEHALF OF MINOR CHILD K.S.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
UNION CITY, HUDSON COUNTY,**

Respondent.

K.S., petitioner appearing pro se

Susanne Lavelle, Esq. appearing on behalf of respondent.

Record Closed: February 1, 2023

Decided: February 8, 2023

BEFORE: **JOANN LASALA CANDIDO**, ALAJ

Petitioner K.S. challenges the residency determination made by the Union City Board of Education (“Board”) regarding the minor child K.S. asserting they were not domiciled within the Union City School District. Respondent’s demand included a request that the Commissioner dismiss the petition, that the child be removed from the district, and that the petitioner be assessed a tuition charge for ninety-two days of K.S., Jr.’s ineligible attendance in the Board’s schools.

The matter was transmitted to the Office of Administrative Law (OAL) on December 12, 2022, for resolution as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. to -13. A hearing was held on January 30, 2023, and the record closed on February 1, 2023, upon receipt of the school calendar.

The issues in this matter are whether K.S. Jr. is eligible to attend respondent's public schools free of charge in accordance with N.J.S.A. 18A: 38-1 and, if not, whether respondent's requests for tuition reimbursement and for disenrollment of K.S., Jr. should be granted.

In support of its claim for tuition, the Board produced evidence in the form of testimony from School Superintendent Silvia Abbato. She testified regarding the results of the investigation supporting the finding that K.S. Jr., is domiciled out-of-district, but continued to attend public schools in the school district for a total of ninety-two days (one holiday). The school year began on September 6, 2022, with nineteen days of attendance for that month, October for twenty days, November for eighteen days and for December seventeen days and for January 2023, students attended school for nineteen days.

Abbato received information in August 2022 anonymously, regarding a residency issue with students on the Union City football team. Abbato directed the Board's counsel to begin an investigation. Counsel reviewed the files of the name of students that transferred into the District that year. When reviewing K.S. Jr. file she found it contained two different addresses, leases were unsigned by the landlord and two utility bills submitted were identical in all respects, but the addresses and owners name were different. K.S. was not aware of the utility bills submitted. Mother of K.S., Jr. presented a driver's license with the student registration that reflects a Jersey City address.

The Board sent the Notice of Initial Determination of Ineligibility to the mother of K.S., Jr on October 18, 2022. The Board did not receive a response. The Board sent the Notice of Final Determination of Ineligibility to the mother of K.S., Jr on November 1,

2022. The Board received an appeal of this determination on November 21, 2022, filed by K.S., the father of K.S., Jr. K.S. filed the appeal with a Jersey City address. (R-8) K.S. wrote on the appeal that a family friend offered to have his son stay with him at the Union City address while his son's mother was having personal issues. On December 21, 2022, family friend Omar Colon provided a document that both K.S. and his son are residing with him since August 15, 2022. The lease provided of Colon's apartment reflects father and son reside in Colon's apartment since May 1, 2022.

K.S. provided an updated utility bill that reflects the Union City address from December 20, 2022 to January 6, 2023. K.S. also changed his driver's license address to the Union City address effective December 20, 2022.

Dr. Anthony Dragona, school business administrator with the Union City school district, provided tuition calculation rate for the 2022-2023 school year by grade level. (R-13) The annual estimated tuition rate for students grade nine through twelve is \$20,576.00. The per diem estimated rate for the same grades is \$114.31 per day of attendance.

K.S. does not have a custody Order for K.S., Jr. He is employed part-time with Sam's Club. Prior to residing in his friend Omar Colon's three bedroom apartment in Union City, he resided at his mother's home. K.S. was not able to show proof at the time of his appeal that he resided at the Union City apartment. Both the change of license and the utility bill reflects the Union City address effective in December 2022.

N.J.S.A. 18A:38-1 provides that public schools shall be free to the following persons over five and under 20 years of age:

1. Any person who is domiciled within the school district;
- 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, if so required by the board, a sworn statement that he is domiciled 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 a copy of his lease if a tenant, or a sworn statement by his landlord acknowledging his tenancy if residing as a tenant without a written lease, and upon filing by the child's parent or guardian 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 statement shall be accompanied by documentation to support the validity of the sworn statements, information from or about which shall be supplied only to the board and only to the extent that it directly pertains to the support or nonsupport of the child. If in the judgment of the board of education the evidence does not support the validity of the claim by the resident, the board may deny admission to the child. The resident may contest the board's decision to the commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the commissioner on the validity of the claim and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this subsection. The board of education shall, at the time of its decision, notify the resident in writing of his right to contest the board's decision to the commissioner within 21 days. No child shall be denied admission during the pendency of the proceedings before the commissioner. In the event the child is currently enrolled in the district, the student shall not be removed from school during the 21-day period in which the resident may contest the board's decision nor during the pendency of the proceedings before the commissioner. If in the judgment of the commissioner the evidence does not support the claim of the resident, he shall assess the resident tuition for 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. Nothing shall preclude a board from collecting tuition from the resident, parent or guardian for a student's period of ineligible attendance in the schools of the district where the issue is not appealed to the commissioner.

In the instant matter, Respondent notified the mother of K.S., Jr. of the residency ineligibility by Final Notice dated November 1, 2022. Neither parent has provided sufficient proof that they have been residing at the Union City address since the start of the 2022-2023 school year. The documents submitted show unsigned lease

agreements, a student registration with the child's mother listed at the Union City address but with a Jersey City driver's license, two attached utility bills with the exact same information but one with the mother's name and the other with another student's parent's name, nor was a custody Order for either parent presented.

Based on the foregoing, I **CONCLUDE** that the respondent has met its burden under N.J.S.A. 18A:38 b (2) that K.S. Jr. was not domiciled in Union City for the dates reflected and therefore is not entitled to a free education in the Union City school district.

N.J.A.C. 6A:22-6.3 states in pertinent part: a) 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.

Pursuant to N.J.S.A. 18A:38-1b, the Commissioner shall assess tuition against petitioner for the time during which the minor child was ineligible to attend school in Union City. Therefore, I further **CONCLUDE** the Board is entitled to tuition reimbursement in the amount of \$10, 516.52 (\$114.31 per day for 92 days) for the time period from September 6, 2022 through January 31, 2023, during which time petitioner's minor child was ineligible to attend school in respondent's district.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's determination that K.S., Jr. is not a resident and domiciliary in Union City, New Jersey, and was not domiciled within its school district during the period being sought, is hereby **AFFIRMED**. It is further **ORDERED** that respondent is entitled to reimbursement from petitioner for the cost of audited tuition in the amount of \$10,516.52.

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.



February 8, 2023

DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

February 8, 2023

Date Mailed to Parties:

February 8, 2023

ljb

EXHIBITS

- R-1 Registration form for Khalil Sutton Jr. dated July 25, 2022
- R-2. Standard Form of Apartment Lease between Omar Colon Landlord and Shaquana Forester (unsigned by Landlord).
- R-3 New Jersey Driver's License for Shaquana Forester
- R-4 PSEG Account in Name of Shaquana Forester for service address 4711 Park Ave. 1R, Union City.
- R-5 PSEG Account in Name of Shanika Finely (mother of Student K.R.) for Service address 500 Central Avenue, Apt 810, Union City.
- R-6 October 18, 2022 Notice of Initial Ineligibility
- R-7 November 1, 2022 Notice of Final Ineligibility
- R-8 November 21, 2022 Pro Se Residency Appeal filed by Khalil Sutton Sr. and November 22, 2022 Department of Education Acknowledgement of Receipt of Appeal.
- R-9 12/21/2022 Notarized Letter of Omar Colon
- R-10 PSEG Bill for Sutton, 4711 Park Avenue, Fl.1R, Union City, Acct. No. 7658866903.
- R-11 NJMVC Change of Address Acknowledgment for Khalil Sutton
- R-12 Affidavit of Robert Hovan, Roberts & Associates (private investigator) with Exhibits A-B (Deed for 4711 Park Avenue, Union City; Photograph of 882 Pavonia Avenue, Jersey City directory.)
- R-13 Excerpts of UCBOE Budget for SY 22/23 (for Per Diem Student Tuition Cost).