

W.D.M. on behalf of minor child, K.P., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF EWING,
MERCER COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a resident of Ewing Township – contested the Board’s determination that his grandson is not domiciled in Ewing and is therefore ineligible to attend school in respondent’s district. Petitioner asserts that K.P. – for whom he is legal guardian – lives with him in Ewing, but spends time in Trenton assisting his aunt. Respondent Board contended that K.P. is domiciled in Trenton, and sought tuition reimbursement for his alleged period of ineligible attendance at the rate of \$55.06 per day.

The ALJ found that between May 2008 and June 2009, K.P. was observed thirty times boarding a bus in Trenton and traveling to Ewing High School, and petitioner failed to appear at the hearing in this matter to refute the Board’s testimony and surveillance report. The ALJ concluded that K.P. was domiciled in Trenton for the period of time at issue, and therefore was not entitled to receive a free public education in Ewing Township schools. The ALJ dismissed the petition, and granted the Board’s counterclaim for tuition in the amount of \$10,901.88.

Upon consideration of petitioner’s exceptions to the Initial Decision – in which W.D.M. states that he was in Georgia on the date of the scheduled hearing and requests that the matter be reopened so that he can present facts that will demonstrate that K.P. is permanently domiciled in his household – the Commissioner remanded the matter to the OAL for findings and recommendations concerning the petitioner’s application to reinstate his petition and, if the ALJ finds in favor of petitioner on that threshold issue, for findings and recommendations on the underlying merits of the case.

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.

OAL DKT. NO. EDU 704-09
AGENCY DKT. NO. 25-2/09

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At issue in this controversy is whether K.P. is domiciled in Ewing and entitled to a free public education in its school district. A hearing in the Office of Administrative Law (OAL) was scheduled for August 11, 2009, and petitioner was so notified.

Petitioner did not appear at the hearing and, consequently, the Administrative Law Judge (ALJ) accepted as fact respondent's uncontested evidence suggesting that K.P. is domiciled in Trenton. The ALJ further found that \$55.06 is the relevant daily tuition fee for Ewing High School students, and that petitioner owes respondent tuition for 198 days, amounting to \$10,901.88. An Initial Decision was issued on August 24, 2009 and mailed to the parties on August 27, 2009.

On September 8, 2009, the Commissioner received exceptions from petitioner asserting that he had "inadvertently missed the [OAL] hearing" because he "was away in Georgia." Petitioner further stated that if this matter is reopened he will present facts that demonstrate that K.P. permanently resides in his household. More specifically, he contends that

when the Ewing investigator witnessed K.P. in Trenton it was because K.P. was there temporarily assisting his aunt.

After the Commissioner forwarded petitioner's exceptions to the respondent Board, the Board filed a reply urging that the matter proceed to a final determination. The Commissioner, however, has decided to remand the case to the OAL for findings and recommendations concerning the merits of petitioner's application to reinstate his petition. Should the ALJ decide in favor of petitioner on that threshold issue petitioner's claim that K.P. is domiciled in Ewing may be adjudicated.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 9, 2009

Date of Mailing: October 9, 2009

* 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*.