

MARTIN COHEN, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 JAMES R. DURR, MEMBER, BOARD : DECISION
 OF EDUCATION OF THE TOWNSHIP :
 OF CHESTERFIELD, BURLINGTON :
 COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner, Martin Cohen, alleged that respondent, a Chesterfield Board member, was not a resident of the District. Petitioner, who was divorcing his spouse, while acknowledging that he sometimes was away from the home, provided documentation listing the Chesterfield property as his residence.

N.J.S.A. 18A:12-3 states that membership in a local board of education terminates immediately when a board of education member ceases to be a bona fide resident of the district. The ALJ found no proof that respondent was no longer residing in Chesterfield. The ALJ found that respondent testified credibly and presented documentation such as bills, tax records, *etc.*, that listed Chesterfield as his address. The ALJ denied petitioner's request for a declaration that respondent was not a bona fide resident of Chesterfield Township.

The Commissioner reversed the determination of the ALJ and remanded the matter to the OAL for further findings of fact and credibility determinations. The Commissioner noted that the ALJ incorrectly listed two witnesses for petitioner as respondent's witnesses and, because the ALJ made no credibility determinations or factual findings with regard to the testimony of these witnesses, the matter must be remanded for further proceedings.

December 28, 2000

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4, and were duly considered by the Commissioner in reaching his determination herein.¹

In his exceptions, petitioner argues, *inter alia*, that the Administrative Law Judge (ALJ) incorrectly lists Elizabeth Durr and Casey Durr as witnesses for respondent, and that the ALJ’s mistaken belief that these witnesses were testifying on behalf of respondent directly influenced her conclusions. (Petitioner’s Exceptions at 1) Petitioner also asserts that these two witnesses never made the statements attributed to them by the ALJ, and that, given the witnesses’ actual testimony, it is virtually impossible to believe that the ALJ understood their testimony to be in support of respondent. (*Id.* at 2)

Initially, the Commissioner notes that Elizabeth Durr and Casey Durr *are listed* in the Initial Decision as witnesses for respondent as asserted by petitioner. In the absence of credibility determinations by the ALJ, however, the Commissioner is unable to determine what

¹ Respondent did not submit exceptions nor reply to petitioner’s exceptions.

effect, if any, the ALJ's mistaken belief that these witnesses were testifying on behalf of respondent had on her conclusions, and what reasoning she utilized in assigning weight to that testimony.²

Moreover, the Commissioner notes that, according to the Initial Decision, the sole basis of petitioner's claim that respondent is not a resident of the school district on which he serves as a board member is that respondent listed an out-of-district address in his divorce papers. In the event that petitioner presented other evidence in support of his claim, including testimony offered at hearing, it is imperative for purposes of the Commissioner's review that the ALJ acknowledge any relevant evidence with an explication as to why such evidence was accepted or rejected.

In that the ALJ rendered neither sufficient factual findings nor credibility assessments to permit the Commissioner to fairly resolve whether petitioner has met his burden, the Commissioner is compelled to remand this matter to the OAL for a complete recitation of testimony and findings of fact.

Accordingly, this matter is remanded to the OAL for further findings and credibility determinations to address the concerns expressed herein.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 28, 2000

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² Petitioner did not provide transcripts of the hearing for the Commissioner's review.

³ This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.