

388-01

E.M.M.A., on behalf of minor children, M.A. :  
AND H.A.,  
  
                  PETITIONER, :  
  
V. : COMMISSIONER OF EDUCATION  
  
BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF UNION, UNION COUNTY,  
  
                  RESPONDENT. :

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SYNOPSIS

Petitioning parent challenged the Board's residency determination. Petitioner failed to attend the administrative hearing.

In light of the fact that petitioner abandoned his case, the ALJ dismissed the petition and ordered payment of tuition.

The Commissioner affirmed the ALJ's decision with regard to the residency determination. However, after requesting and receiving specific information from the Board setting forth the amount of tuition owed, the Commissioner received a letter from an attorney acting on behalf of petitioner contesting the calculation of the amount of tuition owed by petitioner. As such, the Commissioner remanded the case to OAL for proceedings solely to determine the amount of tuition owed by petitioner to the Board.

October 15, 2001

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 5172-01  
AGENCY DKT. NO. 104-4/01

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The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions to the Initial Decision were timely filed pursuant to *N.J.A.C.* 1:1-18.4. In its submission the Board indicates it is inclined to pursue its counterclaim for tuition against petitioner; thus, while it urges affirmance of the Initial Decision, the Board also requests remand of the matter to the OAL for hearing on the calculation of tuition. On September 18, 2001, the Board was instructed to submit to the Commissioner, within five (5) days, the information for the calculation of tuition required by *N.J.A.C.* 6A:3-8.1(d) for each of petitioner's children; *i.e.*, the rate(s) of tuition for the year(s) at issue, the *per diem* rate(s) for same, the date the ineligible attendance began, and the number of days of ineligible attendance at issue for each child.

On September 24, 2001, the Board submitted a certification by the Board Attorney which provided information to calculate the tuition owed for the period of ineligible attendance in the Union Township Schools by petitioner's children, one who, the Board reports, attended kindergarten and one who attended grade 4 from April 23 – May 29, 2001. At the *per*

*diem* rate of \$32.70 for kindergarten and \$39.50 for grade 4, the Board calculates tuition owed to be \$1,949.40.

On October 9, 2001, a letter from Abdul Majid Hasan, Esq. was filed on petitioner's behalf in response to the Board's information regarding calculation of tuition. The letter avers, *inter alia*, that:

1. Petitioner initially enrolled his children in the Union Township Schools on April 30, 2001;
2. The children were in kindergarten and first grade, not kindergarten and fourth grade;
3. The children's last day of attendance was May 9, 2001. Petitioner recalls the date because, in light of the controversy surrounding their attendance at school, he declined the advice of the school's principal to leave the children in school to the end of that week;
4. Petitioner lived at the Best Inn Hotel in Union from May 5, 2001 through May 13, 2001; thereafter, living with a friend at 901 Chestnut Road in Union; and
5. On or about May 14, 2001, petitioner moved from Union, New Jersey to New York where he could get appropriate medical care for his son. (Hasan letter, dated October 5, 2001)

Upon review of the record in this matter<sup>1</sup>, the Commissioner is compelled to agree with the Administrative Law Judge (ALJ) that petitioner abandoned or withdrew his appeal when he failed to appear at the OAL hearing. Consequently, the recommended decision of the ALJ is adopted for the reasons set forth in the Initial Decision, except as it pertains to the Board's counterclaim for tuition.

However, review of the parties' submissions in response to the Initial Decision clearly indicates that a factual dispute exists regarding the dates of the children's attendance in

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<sup>1</sup> Upon review of the record, the Commissioner notes that the letter of ineligibility for attendance at school in Union Township sent to petitioner by respondent references the children's visa/immigration status. The Commissioner wishes to caution the Union Township Board of Education, and other boards of education as well, that the visa/immigration status of a student seeking admission to school *may not* be considered in making eligibility determinations pursuant to *N.J.S.A. 18A: 38-1*.

the Union Township Public Schools and the grade placement of one of petitioner's children. Therefore, calculation of tuition owed by petitioner cannot be effectuated based on the record currently before the Commissioner. Consequently, the matter must be remanded to the OAL for further proceedings as necessary to yield an accurate calculation of tuition owed. Such calculation should consider, among other evidence, school register data which documents the daily attendance of a pupil in a given school by grade pursuant to the requirements of *N.J.A.C. 6:3-9.1 et seq.*

Accordingly, the matter is hereby remanded to the Office of Administrative Law for the sole purpose of conducting further proceedings, as may be necessary, to calculate the tuition owed by petitioner to the Board for the period of ineligible attendance of his children during the 2000-2001 school year.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 15, 2001

Date of Mailing: October 16, 2001

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<sup>2</sup> This decision 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.