

#352-15 (OAL Decision: Not available online)

B.P., on behalf of minor child, N.P., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BURLINGTON,
BURLINGTON COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the determination of the respondent Board that his daughter, N.P., did not reside within the school district, and was therefore not entitled to a free public education in Burlington Township schools. The Board contended that N.P. was not residing at the Burlington Township address provided by the petitioner, and sought repayment of tuition for the period of N.P.'s ineligible attendance. Petitioner claimed that his daughter lives with him at his apartment in Burlington Township. The Board asserted that a residency investigation confirmed that N.P. lives with her mother, R.P., in Willingboro. A hearing in the matter was conducted on August 11, 2015.

The ALJ found, *inter alia*, that: it is undisputed that R.P. is a resident of Willingboro; although B.P. has clearly been a resident of Burlington Township since February 2015, and may have shared joint legal custody of N.P., the evidence demonstrated that N.P. continues to live with her mother in Willingboro; a significant amount of surveillance was conducted during the residency investigation, and failed to observe N.P. spending even one night at B.P.'s apartment. The ALJ concluded that, based on the credible testimony and documentary evidence, N.P. is not domiciled in Burlington Township, and must be considered as having been domiciled with her mother, R.P., in Willingboro for purposes of school attendance from March 17, 2015 to June 18, 2015. Accordingly, the ALJ affirmed the Board's determination that N.P. was not eligible for a free public education in Burlington Township, and ordered that petitioner reimburse the Board for the cost of tuition in the amount of \$9,230.38.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, but determined that the matter must be remanded to the OAL for the proper development of the record with respect to the amount of tuition due, as there are inconsistencies in the record regarding the last day of school for the 2014-2015 school year, and the Board failed to submit an affidavit outlining the tuition costs. Accordingly, Commissioner remanded the case to the OAL for calculation of tuition due and supplementation of the record as warranted.

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.
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October 23, 2015

OAL DKT. NO. EDU 8697-15
AGENCY DKT. NO. 119-5/15

B.P., on behalf of minor child, N.P., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BURLINGTON,
BURLINGTON 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 pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, B.P., and the Board of Education’s reply thereto.¹

Upon a review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons stated in the Initial Decision – that N.P. was not domiciled with her father in the Burlington Township School District (District) between February 2, 2015 and the end of the 2014-2015 school year. The Commissioner finds the petitioner’s exceptions unpersuasive, largely reflecting arguments previously raised before the ALJ and taken into account by her in weighing the testimony and in concluding that N.P. resides with her mother in Willingboro, New Jersey. The Commissioner also finds no basis in the record to reject the ALJ’s determinations of witness credibility. The ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and made findings of fact based upon their testimony.

With respect to the amount of tuition owed to the District for N.P.’s ineligible attendance, the Commissioner finds that this matter must be remanded to the OAL for the proper

¹ The record does not include a transcript of the hearing held at the OAL on August 11, 2015.

development of the record. Although it appears from the record that N.P.'s ineligible attendance in the District began on February 2, 2015, the ALJ ordered tuition to be reimbursed in the amount of \$9,230.38 for the period from March 17, 2015 through June 22, 2015. It should be noted, however, that if the per-diem tuition rate was \$107.33 for the 2014-2015 school year, the total tuition amount ordered by the ALJ in the Initial Decision could not possibly add up to \$9,230.28 for the period of March 17, 2015 through June 22, 2015.² There are also inconsistencies in the record regarding the last day of school for the 2014-2015 school year. The Initial Decision indicates it was June 18, 2015, but then went on to order tuition costs through June 22, 2015. The District's submissions provide no clearer indication as the one correspondence in the record that was authored by the District references tuition costs through June 30, 2015. In light of the fact that the District did not submit an affidavit outlining the tuition costs and the record does not contain a transcript from the hearing at the OAL where the Business Administrator testified to the tuition costs, it is impossible to ascertain the correct tuition amount that is owed to the District.

Accordingly, this matter is remanded to the OAL for the calculation of tuition costs owed to the District for N.P.'s ineligible enrollment in the District during the 2014-2015 school year.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: October 23, 2015

Date of Mailing: October 26, 2015

² On page 9 of the Initial Decision it states that "the respondent testified that the per-diem rate for the school year 2013-2014 was \$107.33". It can only be assumed that the Business Administrator testified to the per-diem rate for the 2014-2015 school year at the OAL hearing.

³ 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*).