

RECORD SEALED

#75-06 (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu02946-02_1.html)

BOARD OF EDUCATION OF THE :
BOROUGH OF BOUND BROOK, :
SOMERSET COUNTY, : COMMISSIONER OF EDUCATION

PETITIONER, : DECISION

V. :

NEW JERSEY STATE DEPARTMENT :
OF EDUCATION, DIVISION OF :
FINANCE, AND R.B., :

RESPONDENTS. :

SYNOPSIS

Petitioning Board of Education appealed the Department of Education's determination that it was the district of residence for pupil B.P. and was financially responsible for his education during the 2001-02 school year. The district contended that B.P.'s parent, R.B., did not reside in the district during the period in question and sought return of State aid monies withheld from the district in payment for B.P.'s educational costs.

The ALJ concurred with the district, finding, *inter alia*, that R.B. had no fixed, regular and adequate residence, and that she did not reside in Bound Brook during the school year at issue, notwithstanding that she may have used her father-in-law's Bound Brook address for "pit stops," receipt of mail and other similar purposes. The ALJ concluded that – under applicable school funding law – Bound Brook was not the "district of residence" for B.P. during the 2001-02 school year and that the Department must provide State aid to the district in the amount of \$51,165.28, which represents the amount erroneously withheld from the Board's State aid to cover B.P.'s educational costs.

The Deputy Commissioner, to whom the matter was delegated pursuant to *N.J.S.A.* 18A:4-33, adopted the Initial Decision as the final decision in this matter.

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.

February 21, 2006

OAL DKT. NO. EDU 2946-02
AGENCY DKT. NO. 109-4/02

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BOARD OF EDUCATION OF THE	:	
BOROUGH OF BOUND BROOK,	:	
SOMERSET COUNTY,	:	COMMISSIONER OF EDUCATION
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OF EDUCATION, DIVISION OF FINANCE,	:	
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	:	
RESPONDENTS.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed by the Deputy Commissioner, to whom this matter has been delegated pursuant to *N.J.S.A.* 18A:4-33, as have the Department of Education's (Department) exceptions and the Board of Education's (Board) reply.

The Department first excepts to the determination of the Administrative Law Judge (ALJ) that R.B. was a credible witness, pointing out the instances on record where R.B. indicated that she lied about her residency for purposes of mail receipt, motor vehicle and insurance documents, welfare benefits, court proceedings and interactions with the Division of Youth and Family Services (DYFS). The Department also objects to the ALJ's statement that W.B. indicated to the school attendance officer that he did not know where R.B. lived, citing testimony and documents indicating that while W.B. said he did not know where R.B.'s *children* lived, he *also* said that R.B. did live at his Bound Brook address. Finally, the Department contends that R.B.'s residency in Bound Brook during the 2001-02 school year can be inferred from her statements during a 2003 DYFS proceeding, notwithstanding that she was not specifically questioned about that period of time. (Department's Exceptions at 1-4)

In reply, the Board contends that this matter turns on R.B.'s residency during the period in question; that only R.B. knows the truth in this regard, and she testified that she did not live in Bound Brook; and that there is no basis in the record to attack the ALJ's credibility determination, which is entitled to deference pursuant to longstanding decisional precedent. (Board's Reply at 1-5)

Upon review of the record and submissions on exception, the Deputy Commissioner determines to adopt the Initial Decision of the ALJ, subject to one correction in fact-finding as noted below.

As the Board recognizes, the outcome of this matter substantially depends upon R.B.'s assertions that she did not reside in Bound Brook during the period at issue. With respect to the credibility of any lay witness during contested case proceedings, *N.J.S.A. 52:14B-10(c)* states in pertinent part:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record.

Here, the Deputy Commissioner is satisfied that there is sufficient evidence in the record to support the ALJ's assessment that R.B. was telling the truth about living "from place to place" while using her father-in-law's Bound Brook address for official purposes and as an "occasional pit stop." (Initial Decision at 11, 18) *In re Taylor*, 158 *N.J.* 644 (1999) In so holding, the Deputy Commissioner is cognizant that the ALJ's credibility determination is entitled to deference, since the ALJ, as finder of fact, had the greatest opportunity to observe the witness's demeanor. *In the Matter of the Tenure Hearing of Tyler*, 236 *N.J. Super.* 478, 485 (App. Div.), *certif. denied*, 121 *N.J.* 615 (1989); *In the Matter of the Tenure Hearing of Frank Roberts*, 96 *N.J.A.R.* 2d (EDU) 549, 550 (1996).

Moreover, although the Department is correct that the record belies the ALJ's finding (Initial Decision at 11) that W.B. claimed R.B. was not living with him – and the Deputy Commissioner here modifies the fact-finding in this matter to so indicate – reversal of this one finding does not sufficiently tip the balance of evidence and testimony so as to alter the final conclusion to be drawn from the record. Similarly, although the Deputy Commissioner is not persuaded that any reliable inference can be drawn from R.B.'s 2003 DYFS proceeding statements, even if such an inference were to be accepted, *arguendo*, it would be outweighed by the bulk of credible testimony on record.

Accordingly, for the reasons expressed therein subject to modification of fact-finding in the one instance noted above, the Initial Decision of the OAL – finding that Bound Brook is not the district of residence for B.P. and directing the Department to provide the \$51,165.28 it withheld from the Board's State aid as a consequence of its determination to the contrary¹ – is adopted as the final decision in this matter. In the interest of protecting the confidentiality of the numerous DYFS records contained in the file, the Deputy Commissioner directs that the record of this matter be sealed.

IT IS SO ORDERED.²

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: February 21, 2006

Date of Mailing: February 22, 2006

¹ The Deputy Commissioner notes that such determination was made on the basis of information supplied by DYFS and that the Department acted appropriately based on the information it had. See Initial Decision at 7-8.

² 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.*