

#274-12 (OAL Decision: Not yet available online)

E.A.A. on behalf of minor child E.A.Z., :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE :  
TOWNSHIP OF NORTH BRUNSWICK, :  
MIDDLESEX COUNTY, :  
RESPONDENT. :

---

SYNOPSIS

Petitioner filed a *pro se* residency appeal challenging the determination of the respondent Board that his daughter was not eligible for a free public education in the North Brunswick school district during the 2011-2012 school year. Petitioner contended that his daughter lived primarily with him in North Brunswick, but also spent time in New Brunswick at her mother's residence. The respondent Board asserted – based on substantial evidence produced during a residency investigation – that E.A.Z. lived in New Brunswick with her mother during the 2011-2012 school year. The Board sought reimbursement for tuition for the 2011-2012 school year in the amount of \$10,250.

The ALJ found that: petitioner's daughter told her friends at her school in North Brunswick that she resided in New Brunswick; in his petition, petitioner stated that E.A.Z. moved in with him in North Brunswick completely starting on December 17, 2011; petitioner testified, however, that E.A.Z. began to stay with him from Sunday night to Friday beginning in January 2012; the residency investigation report included statements from several of petitioner's relatives indicating that E.A.Z. did not live in North Brunswick, but rather with her mother in New Brunswick; petitioner's testimony regarding the number of nights E.A.Z. stayed with him beginning in September 2011 was not credible; petitioner's testimony about E.A.Z. staying with him from Sunday night to Friday beginning in December 2011 or January 2012 was credible; and the weight of the evidence indicates that petitioner's daughter did not live in North Brunswick during the first half of the 2011-2012 school year. The ALJ concluded that E.A.Z. was therefore not eligible for a free public education in the district's schools until December 2011 or January 2012, and accordingly the respondent Board is entitled to tuition reimbursement from petitioner for one half of the 2011-2012 school year in an amount based on the per diem rate for students in kindergarten through fifth grade.

Upon a full and independent review, the Commissioner accepted the conclusions of the ALJ, but remanded the matter to the OAL for further proceedings to determine the actual amount of tuition due respondent based on the exact date that E.A.Z. commenced living with her father in North Brunswick and the exact number of days of E.A.Z.'s ineligible attendance in respondent's school district during the first half of the school year.

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.

July 11, 2012

OAL DKT. NO. EDU 2578-12  
AGENCY DKT. NO. 27-2/12

E.A.A. on behalf of minor child E.A.Z., :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE :  
TOWNSHIP OF NORTH BRUNSWICK, :  
MIDDLESEX COUNTY, :  
RESPONDENT. :

---

The Commissioner has reviewed the record and the Initial Decision of the Office of Administrative Law (OAL) concluding that petitioner’s minor child is now domiciled in North Brunswick and entitled to attend respondent’s schools, but that respondent is owed tuition for the first four or so months of the 2011-2012 school year.<sup>1</sup> For the following reasons the Commissioner accepts the conclusions of the Administrative Law Judge (ALJ), but remands the case for further proceedings.

The ALJ found “that appellant’s daughter did not live in North Brunswick during the first half of the 2011/2012 school year,” Initial Decision at 6, which finding is clearly supported by the record. However, the ALJ also found – based largely upon her evaluation of the credibility of petitioner’s testimony at the April 2, 2012 hearing – that beginning in December 2011 or January 2012 (depending upon whether one relies on petitioner’s verified petition or on his testimony) E.A.Z. resided with petitioner in North Brunswick from Sunday evenings through Fridays. (*Ibid.*) The Commissioner will defer to that credibility finding, which is not definitively contradicted by the

---

<sup>1</sup> Neither party has filed exceptions to the Initial Decision.

record. *N.J.S.A. 52:14B-10(c); D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 N.J. Super. 269, 273 (App. Div. 2004).

It follows from the foregoing that E.A.Z. was ineligible to attend school in respondent's district for the first four or so months of the 2011-2012 school year, and that respondent is due tuition for that period of time.<sup>2</sup> However, the amount of the tuition due respondent cannot be determined by the Commissioner on the record before him. More specifically, while the yearly tuition for E.A.Z.'s grade level can be ascertained by reference to Respondent's Exhibit R-3, neither the exact date that E.A.Z. commenced living with her father in North Brunswick, nor the exact number of days of E.A.Z.'s period of ineligible attendance was determined by the ALJ.

Absent such findings, the Commissioner is constrained to remand this case to the OAL for further proceedings to determine the amount of tuition due respondent.

IT IS SO ORDERED.<sup>3</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 11, 2012  
Date of Mailing: July 12, 2012

---

<sup>2</sup> Because no findings were made by the ALJ about the 2010/2011 school year, the Commissioner issues no determinations about same.

<sup>3</sup> 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)*