374-05 (OAL Decision http://lawlibrary.rutgers.edu/oal/html/initial/edu06015-04_1.html)

D.L. and Z.Y. on behalf of minor children T.L. and K.L.,	:	
PETITIONERS,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF PRINCETON REGIONAL SCHOOL DISTRICT	:	DECISION
RESPONDENT.	:	

SYNOPSIS

Petitioners originally filed a *pro se* Residency Appeal in 2001 challenging the respondent's determination that their children, T.L. and K.L., had lived in West Windsor from January 2000 until April 2001, and therefore owed tuition to Princeton Regional Schools for the period of their ineligible attendance. Petitioners ultimately appealed to the Superior Court, Appellate Division, where it was determined that, despite owning property in both Princeton and West Windsor for a period of time, petitioners' intent during the period at issue was to sell the West Windsor property and establish a permanent home in Princeton. The Appellate Division remanded the matter for the purpose of determining the amount of tuition owed, if any, to the Princeton Regional School District for the period during which the petitioners' children were enrolled between January 3 and February 29, 2000, the date on which petitioners' closed on the purchase of a home in Princeton. A remand hearing was scheduled for August 4, 2005, and notice was mailed to a former address of petitioners. Petitioners failed to appear at the hearing, and aver that they were not properly notified.

At the scheduled hearing, respondent presented *ex parte* proofs to establish a *per diem* tuition cost of $56.59 for the 1999-2000 school year; the number of days that school was in session during the period in question was estimated at 37. Based on this information, and the fact that there was no opposition to the certification, the ALJ concluded that petitioners owe respondent $4,187.66 as prorated tuition for T.L. and K.L. for the period from January 3 to February 29, 2000 when they were attending school in Princeton Regional School District while not domiciled there.

Upon review of the record and the initial decision of the ALJ, the Commissioner remands the matter to the OAL for a hearing to determine whether petitioners owe respondent tuition and, if so, how much is due. In so deciding, the Commissioner finds that although petitioners had properly advised the OAL of their change of address, the OAL sent the hearing notice to an address that was a year out of date, preventing petitioners from their right to appear and be heard. The Commissioner further notes that a hearing is necessary in light of the existence of School Policy #5118 (Admission of Non-Resident Students), which allows the waiver of tuition charges for up to sixty days where families intend to move into the district but are temporarily prevented from doing so due to reasons beyond their control.

OAL DKT NO. EDU 6015-04
AGENCY DKT. NO. 335-8/01

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The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the parties' exceptions have been independently reviewed. Upon such review the Commissioner is constrained to remand the matter to the OAL.

Petitioners lived in Princeton from March 1995 to June 1998, during which time their children attended Princeton district schools. They moved to West Windsor in 1998 and the two children consequently attended West Windsor schools during the 1998-1999 school year. In November 1999, petitioners listed their West Windsor house for sale and in December 1999, they contracted to purchase a condominium in Princeton. They returned the children to Princeton Schools on January 3, 2000, and closed on the Princeton condominium on February 29, 2000. Because the West Windsor home was on the market for a long time, the family spent time in both homes for the next year and a half, until the West Windsor house was sold.

In March of 2001, upon the report of a guidance counselor, a Princeton attendance officer conducted a residence investigation and observed the children and mother

leaving the West Windsor house a few times in the mornings to drive to school in Princeton. Petitioners conceded that they spent time in both homes. They believed that a lived-in home (i.e., the one in West Windsor) would sell faster, and they were, further, redecorating to attract buyers. In addition, petitioners explained that their parents had been visiting from China and staying in the West Windsor home. Nonetheless, on April 4, 2001, respondent notified petitioners that their children were not legal residents of Princeton and would have to be removed from the district schools by April 9, 2001. The notice further advised that tuition would be due for past "illegal" attendance.

On July 24, 2001, petitioners closed on another house in Princeton, at B. Lane, and on August 10, 2001 they moved in. Respondent sent petitioners a letter on August 1, 2001 that the Princeton Board of Education determined after a hearing that petitioners' children had lived in West Windsor from January 2000 through April 6, 2001, and owed tuition. Petitioners appealed to the Commissioner of Education on August 22, 2001.

Petitioners pursued their administrative remedies and ultimately appealed to Superior Court, Appellate Division. The Appellate Division determined that the evidence supported petitioners' position that, although they owned property in both Princeton and West Windsor for a period of time, their intent during the period at issue was always to sell the West Windsor property and establish a permanent home in Princeton. Accordingly, the Appellate Division remanded the matter for the specific purpose of determining "the amount of tuition owed, *if any*, to the Princeton Regional School District for the period of time the children were enrolled in the district from January 2000 until February 29, 2000, when petitioners closed on the purchase of the Princeton [condominium] home" (emphasis added).

The case was remanded back down the chain to the OAL. A notice for an August 5, 2004 pre-hearing conference was sent out on July 26, 2004. Petitioners wrote to the administrative law judge (ALJ) on July 30, 2004 requesting an adjournment because of a business trip, notifying him that petitioners' address had changed, and asking that all future communications be sent to the new address: H. Drive, Princeton, NJ 08540. Nonetheless, the OAL's notice for the remand hearing, which was set for August 4, 2005, was sent out on July 18, 2000, to B. Lane, where petitioners apparently had not resided for over a year.

Not surprisingly, petitioner did not attend the August 4, 2005, hearing. Respondent presented *ex parte* proofs to establish a *per diem* tuition fee to be multiplied by 37 days for two students. The ALJ found that petitioners owed respondent $4187.66, and ordered petitioners to pay.

In their exceptions, petitioners argue: 1) that they were not properly notified about the August 4, 2005, hearing; and 2) that charging them tuition for January 3 through February 29, 2000 would be contrary to respondent's School Policy # 5118, Admission of Nonresident Students, which allows the waiver of tuition charges for up to sixty days where families intend to move into the district but are temporarily prevented from doing so due to reasons beyond their control. As to petitioner's first argument, respondent contends in its reply exceptions that because petitioners received a conference notice a year before the hearing, and were able to acquire a copy of the ALJ's September 2, 2005, Initial Decision on Remand, the Commissioner should assume that petitioners received notice of the August 4, 2005 hearing. As to petitioners' second argument, respondent maintains: 1) that petitioners are precluded from making the argument now because they did not make it at the hearing or at any other time during the proceedings in this matter; 2) that School Policy #5118 is permissive, and does not mandate a

waiver for petitioners; and 3) that petitioners did not follow the procedure for requesting a tuition waiver.

The Commissioner need not reach to the merits of the issues raised about Princeton School Policy #5118, because she finds that petitioners did not receive proper notice of the August 4, 2005 hearing. Petitioners properly advised the OAL of their change of address, but the OAL sent the hearing notice to an address that was a year out of date, preventing petitioners from their right to appear and be heard.

Further, the Appellate Division remanded for a finding as to the amount of tuition, if any, that petitioners might owe to respondent. An examination of School Policy #5118, the history of its application, and any facts about the petitioners' circumstances that might be pertinent to the policy, are clearly relevant to an ultimate determination about whether and/or how much tuition is due.

Accordingly, the Commissioner finds that petitioners are entitled to a hearing to determine whether they owe respondent tuition and, if so, how much is due. The Commissioner hereby remands the matter to the OAL for that purpose.

IT IS SO ORDERED*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 17, 2005

Date of Mailing: October 18, 2005

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* 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.*