

BOARD OF EDUCATION OF THE	:	
WATCHUNG HILLS REGIONAL	:	
HIGH SCHOOL DISTRICT, SOMERSET	:	
COUNTY,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF LONG	:	DECISION
HILLS TOWNSHIP, MORRIS COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioning Board contended respondent Board should be responsible for tuition, related services and transportation expenses for classified student, R.B., for the 1996-97 school year.

ALJ concluded that respondent was responsible for R.B.'s education for the 1996-97 school year as the decision to retain R.B. at Children's Institute for the 1996-97 school year was based on the appropriate criteria set forth in the regulation governing the transition to secondary school. ALJ concluded that the placement determination was a consensus of the opinions of those involved in developing an IEP, not only a reliance on petitioner's policy of not accepting classified students in secondary school until the age of fifteen.

Commissioner adopted initial decision as his own, noting that following petitioner's revision, the policy in question is to be forwarded to the Somerset County Superintendent of Schools for review in order to ensure compliance with *N.J.A.C. 6:28-4.7*.

MAY 11, 1998

OAL DKT. NO. EDU 3638-97
AGENCY DKT. NO. 65-2/97

BOARD OF EDUCATION OF THE	:	
WATCHUNG HILLS REGIONAL	:	
HIGH SCHOOL DISTRICT, SOMERSET	:	
COUNTY,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF LONG	:	DECISION
HILLS TOWNSHIP, MORRIS COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner finds that the fundamental issue herein is whether R.B. was able to be served at the high school level in the 1996-97 school year; petitioner has shown by a preponderance of credible evidence that he was not. Additionally, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner's position was not substantially based on its policy of not accepting classified students until the age of fifteen.

Further, to the extent respondent challenges the credibility determinations and factual findings rendered by the ALJ, the Commissioner notes that the record before him does not

include transcripts of the hearing conducted at the OAL in this matter. Challenges to the factual findings predicated upon credibility determinations made by an administrative law judge require the party to supply the agency head with the relevant and necessary portion of the transcript. See *In re Morrison*, 216 N.J. Super. 143, 158 (App. Div. 1987) In the absence of transcripts from the hearing, due regard should be given to the person who heard the live testimony and assessed the witnesses' behavior at the hearing. *Close v. Kordulak Bros.*, 44 N.J. 589, 599 (1965).

Finally, the Commissioner notes petitioner's representation that its Policy 5150 is under revision (Initial Decision at p. 6, note 4). As the current policy set forth in the present decision is clearly contrary to provisions of special education law requiring individual determinations based on a variety of factors, the Commissioner directs that, upon the planned revision, petitioner's new policy be forwarded to the Office of the Somerset County Superintendent of Schools for review in order to ensure compliance with *N.J.A.C. 6:28-4.7*.

Accordingly, the initial decision of the OAL is affirmed, with clarification as set forth above. A copy of this decision shall be forwarded to the Somerset County Superintendent of Schools.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

MAY 11, 1998

* This decision, as the Commissioner's final determination in the instant matter, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.