

STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF NEWARK, ESSEX :
COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE DEPARTMENT OF : DECISION
EDUCATION, DIVISION OF FINANCE, :

RESPONDENT. :
:

SYNOPSIS

Petitioning District contested the Division's determination that petitioner was the district of residence responsible for the 1996-97 educational costs for D.W., a child placed with a center in Pennsylvania by Division of Youth and Family Services (DYFS).

ALJ concluded that petitioner had not proved that it was unreasonable, arbitrary or capricious for the Division to rely on DYFS's records which plainly indicated that D.W.'s mother was a resident of Newark until February 1989. ALJ concluded that the Division's determination that Newark was the district of residence of D.W.'s mother prior to the original placement was reasonable. Moreover, the ALJ concluded that *N.J.A.C. 6:20-5.3(b)* did not require the Division to conduct its own independent investigation. ALJ affirmed the Division's determination that Newark was the district of residence for D.W. at the time of the initial placement in May 1988.

Commissioner concurred with the ALJ; petition was dismissed.

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. The District's exceptions and the Division's reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4.

The District excepts to the Administrative Law Judge's (ALJ) determination that it should be responsible for D.W.'s educational costs for the 1996-97 school year, essentially contending that: (1) contrary to the ALJ's findings, the records maintained by DYFS did not plainly indicate that C.W., D.W.'s mother, was a resident of Newark from 1987 until 1989; (2) contrary to the ALJ's finding, the Division's reliance upon the records maintained by DYFS was arbitrary, capricious and unreasonable; and (3) the failure of both the Division and DYFS to search for C.W. rendered the Division's determination arbitrary, capricious and unreasonable. (Petitioner's Exceptions at pp. 2, 3)

In reply, the Division contends that the ALJ properly found that the records maintained by DYFS indicate that D.W.'s mother was a resident of Newark until February 1989,

and argues that the District presented no credible evidence to contradict the testimony of DYFS case worker Richard Lee. Neither did the District, according to the Division, prove that the Division's reliance upon the DYFS records was arbitrary and capricious or unreasonable, where relying on DYFS "****is exactly the procedure for district of residence determinations which is set forth in the regulations. *N.J.A.C. 6:20-5.3(b)*." (Division's Reply at p. 3) The Division asserts that since Lee was a credible person with direct access to D.W.'s case file, its reliance upon the information he provided was entirely reasonable. (*Id.*) Finally, the Division maintains that it is not required by either statute or code to conduct a formal search for a missing parent in a district of residence determination, and requiring it to do so would place an unreasonable burden on the resources of the Department of Human Services. (*Id.* at p. 4)

Upon careful and independent review of the record in this matter, the Commissioner concurs with the findings and conclusions of the ALJ. Notwithstanding that the form entitled "District of Residence Determination for a Child Placed by a State Agency in a Group Home, Private School or an Out-of-State Facility" (J-2) initially completed in 1996 by Richard Lee contained data which contradicted later reports,¹ the Commissioner finds that Lee's subsequent clarification (J-5), together with his testimony regarding the same, is sufficiently reliable evidence.² Like the ALJ, the Commissioner finds it noteworthy that the District produced no documentary or testimonial evidence in support of its claim. Additionally, although the District, apparently, could find no records confirming D.W.'s enrollment (initial decision at

¹ It is noted that on page 3 of the initial decision, the ALJ summarizes the data provided by Lee on J-2 and erroneously states that D.W.'s date of placement (at the Devereux Kanner Center) was August 16, 1988, rather than August 16, 1989.

² With respect to the District's exceptions regarding the facts determined by the ALJ based on Lee's testimony and the credence she ascribed to such testimony, 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).

p. 4), the within record shows that the former Newark Board of Education did, in January of 1990, complete a "Transfer from District" form identifying D.W. as a classified student, with an identification number, enrolled in the District. The form indicates that C.W. moved from Newark to Irvington.³ Under these circumstances, the Commissioner concurs with the ALJ that the District has failed to meet its burden of proving that the Division's determination was arbitrary and capricious, or without a reasonable basis.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein, and the Petition of Appeal is dismissed. The Division's determination that the State-Operated School District of the City of Newark is responsible for D.W.'s educational costs for the 1996-97 school year, pursuant to *N.J.S.A. 18A:7B-12(b)*, is affirmed.⁴

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

March 22, 1999

³ This form was submitted by the Interim Board Secretary of the Irvington School District to the Division of Finance, by letter dated April 21, 1997.

⁴ 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.