

215-00

BOARD OF EDUCATION OF THE :
BOROUGH OF BRADLEY BEACH, :
MONMOUTH COUNTY, :

PETITIONER , :

V. : COMMISSIONER OF EDUCATION

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

RESPONDENT. :

SYNOPSIS

Petitioning Board appealed the Department's determination that petitioner was the "district of residence" for student M.J.F. during the 1998-99 school year and that petitioner was therefore financially responsible for M.J.F.'s education during that period, under the State Facilities Act, *N.J.S.A.* 18A:7B-1 to -13, and the regulations promulgated thereunder.

The ALJ noted that under *N.J.S.A.* 18A:7B-12, subsection (b), children placed in residential State facilities by State agencies are deemed to reside in the district where their parent or guardian resided at the time of admission to the State facility. Based on the Bradley Beach address provided by DYFS for Mr. F., M.J.F.'s adoptive father, the Department determined that this was M.J.F.'s district of residence for the 1997-98 school year. Since the information did not change for the 1998-99 school year, the Department reached the same conclusion. Thus, the ALJ concluded that, in the absence of any affirmative proofs to the contrary, petitioner was the district of residence for M.J. F.

The Commissioner rejected the Initial Decision since the ALJ, in his Pre-hearing Order placed the burden of proving district of residence upon the State, but in his Initial Decision he re-shifted the burden to petitioner, with no advance notice of such change afforded petitioner. The Commissioner observed that it is well-established that when a board is contesting a district of residence determination made by Finance based upon the information provided it by the Department of Human Services, the board bears the burden of proving that such determination was in error. Thus, the Commissioner set aside the Initial Decision and remanded the matter to OAL to allow petitioner's presentation of its case with the unambiguous recognition that it bears the burden of persuasion.

July 3, 2000

OAL DKT. NO. EDU 4975-99
AGENCY DKT. NO. 114-5/99

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions were timely filed pursuant to the requirements of *N.J.A.C.* 1:1-18.4.

Petitioner excepts to the Administrative Law Judge’s (ALJ) determination that it is responsible for M.J.F.’s educational costs for the 1998-99 school year, essentially contending that 1) in reaching such conclusion the ALJ misapplied the burden of proof that he, himself, had previously established and 2) in light of its burden, the quantum of proof advanced by respondent was insufficient to reasonably lead to the conclusion that petitioner is the financially responsible district in this matter. (Petitioner’s Exceptions at 2) As such, it avows, the Initial Decision is incorrect and must be overturned.

In support of this charge, petitioner first argues that the ALJ’s decision chastising it for the “lack of depth” in the record in that petitioner presented insufficient proofs or failed to call witnesses in this matter, ignores a pivotal consideration here, respondent, not petitioner, bore

the burden of proof. (*Id.* at 3-4) It proffers that in the progress of this case it quickly became apparent that the parties here were in significantly disparate positions with regard to obtaining information necessary to allow a determination in this matter, *i.e.*, “[t]he records pertaining to the alleged adoption of the child, and to the alleged transfers of custody, guardianship and parental rights, are protected by statute. *N.J.S.A. 9:6-8.10*” (*Id.* at 3) The only information which petitioner has here, it maintains, and the only information to which it is entitled, is a packet provided by the State in November 1999 in response to a Motion for the Production of Documents filed by petitioner. Additional information, it posits, is in the sole control of the State. (*Id.*) Such a situation, it avers, moved petitioner to seek a transfer of the burden of proof in a pre-hearing telephone conference between the ALJ and the parties on November 8, 1999 where, subsequent to hearing petitioner’s arguments in this regard, the ALJ appropriately shifted the burden of proof from petitioner to respondent in his November 23, 1999 Pre-hearing Order. (*Id.* at 3-4) Petitioner further contends that no interlocutory appeal was taken on the issue of burden, nor was any objection, formal or informal, raised on this issue until the conclusion of the hearing on April 6, 2000, at which time respondent argued that the burden should be shifted back to petitioner, which contention was subsequently denied by the ALJ. Consequently, petitioner advances, respondent had the burden of proving that petitioner is the financially responsible district here and any lack of depth in the record is solely attributable to respondent. (*Id.* at 4)

Notwithstanding that “the ALJ himself placed the burden upon the State,” subsequent to the closing of the record, he filed an Initial Decision which clearly re-shifted the burden to petitioner, with no advance notice of such change being afforded petitioner. (Petitioner’s Exceptions at 10) Such a clear contradiction, it argues, “constitute[s] a severe prejudice, injustice and inequity against [petitioner].” (*Id.*) Petitioner, therefore, urges that

should the Commissioner find “that the ALJ properly shifted the burden to [petitioner] without notice or rationale, [petitioner] must then be afforded the opportunity of a further hearing, at which time it may present additional witnesses and testimony, consistent with the responsibilities of a party which knows it bears the burden of persuasion.” (*Id.* at 11)

Petitioner next argues, that based upon the allocation of the burden of proof established by the Pre-hearing Order, the proofs advanced by respondent in support of its determination were insufficient to “objectively and conclusively” allow for determination of petitioner as the financially responsible district here. (Petitioner’s Exceptions at 9) In that respondent has failed to meet its burden of persuasion here, petitioner contends that subsection (d) of the controlling statute, *N.J.S.A.* 18A:7B-12, requires that the State assume financial responsibility for the educational costs of M.J.F. (*Id.*)

Upon his independent review of the record in this matter, the Commissioner is compelled to reject the Initial Decision since he concludes that, notwithstanding that the ALJ’s Initial Decision reflects the utilization of the proper burden of proof in matters of this type, as was advanced in respondent’s exceptions, the ALJ’s Pre-hearing Order in this case erroneously imposes the burden of proof on respondent, thereby serving to unduly prejudice petitioner’s advancement of its case. As such, this matter must be remanded to the OAL to allow for full presentation and argument under the correct standard.

The Commissioner observes that it is well-established that when a board is contesting a district of residence determination made by Finance based upon the information provided it by the Department of Human Services, the board bears the burden of proving that such determination was in error. *See Board of Education of the City of Atlantic City v. New Jersey Department of Education*, 92 *N.J.A.R.* 2d. (EDU) 545; *Board of Education of the City of*

Wildwood v. New Jersey State Department of Education, 97 N.J.A.R. 2d (EDU) 273, *Reversed on other grounds* State Board of Education June 7, 2000; *State-operated School District of the City of Newark v. New Jersey State Department of Education, Division of Finance*, decided by the Commissioner March 22, 1999. Moreover, petitioner's argument with respect to its inability to secure information, over and above that which has been provided in this matter, is rejected as without merit. Although certain DYFS records and documents themselves may, indeed, be protected from discovery, the Board clearly has the ability to call witnesses and elicit testimony from individuals with knowledge of essential facts. As one such example, the person who completed the report relied on by the respondent could be called to testify as to the basis for the information which was provided the respondent; as another, noted by the ALJ, the Board's concerns vis-à-vis Mr. F.'s status as an adoptive father could be resolved by contacting and/or calling him as well. (Initial Decision at 3)

Accordingly, the recommended Initial Decision is set aside and this matter is remanded to the OAL to allow for petitioner's presentation of its case with the unambiguous recognition that it bears the burden of persuasion.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: July 3, 2000

Date of Mailing: July 3, 2000

* This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.