47-01

BOARD OF EDUCATION O F MORRIS HILLS REGIONAL SCHOOL DISTRICT, MORRIS COUNTY,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT OF EDUCATION, DIVISION OF SCHOOL FINANCE,	:	DECISION
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioning Board challenged the determination of the Department that it was legally responsible for educating K.O., a child placed in an out-of-state facility by a State agency, for the 1997-98 school year.

The ALJ concluded that The Board had presented credible testimony to overcome the presumption that the address provided to the Department by DYFS for D.O., the mother of K.O., was correct, and concluded that the Board was not the responsible district for K.O.

The Commissioner affirmed the decision of the ALJ, holding that the presumption that information provided the Department by other State agencies for purposes of determining the district of residence of students is correct may be rebutted by credible evidence or testimony. The Commissioner agreed with the ALJ that the presumption of validity of the DYFS records in this case had been rebutted by the Board.

February 8, 2001

OAL DKT. NO. EDU 3200-98
AGENCY DKT. NO. 491-12/97

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	:	

The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Respondent Department of Education's (Department) exceptions and petitioner's (Board) reply exceptions were timely filed pursuant to *N.J.A.C.* 1:1-18.4.

The Department urges that the Initial Decision should be set aside by the Commissioner because there was a reasonable basis for the Department's decision that the Board is the district responsible for K.O.'s tuition. With respect to this, the Department cites *State-operated School District of Newark, supra,* at 12 and restates its argument that the standard of review in district of residence cases is whether the Department's determination was "arbitrary and capricious, or without reasonable basis." The Department further urges that in the present case, its decision that the Board is the responsible district for K.O. had a reasonable basis and was not arbitrary and capricious, and that the Administrative Law Judge (ALJ) erred when finding to the contrary.

The Department next argues that the DYFS records in this case indicated that K.O.'s mother, D.O., resided in the District on the date of the child's placement in Kidspeace, which it avers is dispositive, given the provisions of *N.J.A.C.* 6:20–5.3(b) which DYFS followed when it submitted, on August 18, 1997, the Department's "District of Residence Determination for a Child Placed in a Group Home, Private School, or an Out-of State Facility" form and listed D.O.'s present address as 107 E. Central Avenue in Wharton, one of the Board's constituent districts. (Department's Exceptions at 3, citing R-2 in evidence) The Department further argues that there was additional evidence which supports its decision because it demonstrates that D.O. lived with her sister at or around the time of her son's placement in Kidspeace; *e.g.*, D.O.'s receipt of phone calls and mail at her sister's home, storage of personal property there and physical presence at the address when she was contacted by phone by the DYFS social worker on August 4, 1997 and when interviewed by the District's attendance officer on September 14, 1997. (*Id*. at 4)

Furthermore, the Department asserts that the ALJ's conclusion that D.O. did not live with her sister was based principally on the testimony of that sister, Darlene Thrower. As to this, the Department initially avers that it is unclear that the ALJ needed to even reach to Thrower's testimony, given that DYFS had complied with *N.J.A.C.* 6:20–5.3(b). (*Ibid*.) The Department further avers the ALJ's analysis of Thrower's credibility is questionable, in particular the ALJ's conclusion that, "[n]o apparent motive exists for Thrower to be untruthful. She receives no known gain if Morris Hills wins this appeal and suffers no known loss if Morris Hills loses." (Initial Decision at 6) The Department argues that Thrower can hardly be characterized as an impartial witness in this case, given her testimony at the hearing that she was employed by the District. (Department's Exceptions at 5)

Initially, the Board avers that the mere existence of documents, as envisioned by *N.J.A.C.* 6:20-5.3(b), does not create an irrebuttable presumption that those documents are, in fact, correct and without question and it urges that, if this were true, there would be no need for an appeal mechanism. As to the actual documents in the instant matter, the Board argues that the Department "ignores the unequivocal fact that there were two different documents in K.O.'s file (Exhibits R-2 and R-3) which reflect differing addresses for D.O." (Board's Reply Exceptions at 2) Moreover, the Board maintains that the evidence in the matter established that the information contained in R-2 was apparently derived through several layers of hearsay before reaching the printed page and David Johnson, the DYFS worker, testified that while document R-3 was a DYFS record, he did not know where it came from; nor did he know the circumstances under which R-3 had been created or changed. (*Ibid*.) The Board further argues that:

> The mere existence of documents is not enough. Their contents must be verified, or disputed. The Board has clearly disputed, and disproven, the contents of the DYFS records.
>
> In establishing the residence of D.O., the Board presented the most concrete evidence that could be offered: the testimony of Darlene Thrower, the sister with whom D.O. allegedly lived. No one was in a better position to testify as to the residents of her home than Ms. Thrower. Ms. Thrower's testimony was straightforward and sincere.***
>
> On pages four and five of the State's Exceptions, the State characterized [the ALJ]'s analysis of Ms. Thrower's credibility as "questionable." In support of that assertion, the State proclaims that "Thrower testified at the hearing that she was employed by the District." This representation is incorrect. During the hearing, Ms. Thrower testified that she started working with the Wharton Board of Education in October 1998. The Wharton Board of Education serves the elementary school students of Wharton. The Township of Wharton is a constituent district of the Morris Hills Regional School District Board of Education, which serves high school students. The Wharton Board of Education is not the same

> as the Petitioner Board. [The ALJ] correctly determined that Ms. Thrower had no reason to be untruthful. (Board's Reply Exceptions at 2-3)

Upon review of the record in this matter, the Commissioner agrees with and adopts as his own the findings and conclusions of the ALJ that Morris Hills Regional School District was not, within the meaning of *N.J.S.A.* 18A:7B-12, the district of residence for K.O. for the 1997-98 school year. A review of the record convinces that Commissioner that the ALJ is correct in concluding that:

> [I]t is appropriate for the Department to confer an initial presumption of validity on information set forth in the official records of other New Jersey agencies. It does not follow, however, that such information is binding on the Department, even when, as in our case, that other state agency acted totally in good faith. Where a school district is able to demonstrate that such information is derived from unreliable sources, a mechanism must be created for correction of false data. ***Any presumption in favor of the regularity of official state records is rebuttable and can be overcome by the production of countervailing evidence.***
>
> Unlike the [*State-operated School District of N*ewark] case, Morris Hills introduced strong evidence sufficient to destroy the probative force of any presumption. From the proofs presented at the hearing, Morris Hills has carried its burden of showing that D.O. did not reside in Wharton at the relevant time. (Initial Decision at 8-9).

See also Board of Education of Lower Camden County Regional School District No.1 v. State of New Jersey, Department of Education, Division of School Finance, decided by the Commissioner, August 13, 1999, wherein the ALJ concludes, at page 15 of the Initial Decision, that while the information provided to the Department by other state agencies pursuant to *N.J.A.C.* 6:2-5.3(b) carries a presumption of correctness, that presumption is rebuttable. This means that the party challenging the presumption must produce enough evidence to support a

finding of its nonexistence; *i.e.*, once evidence tending to rebut the presumption is introduced, the presumption of correctness loses its force.

The ALJ in the instant matter has correctly concluded that the Morris Hills Regional Board has borne its burden of rebuttal by showing the lack of accuracy/sufficiency of the information provided by DYFS upon which the Department relied to make its district of residence determination, specifically that the DYFS records in this case have been proven to be inaccurate and not supported by competent evidence. Moreover, the Commissioner finds meritless the Department's exceptions impugning the ALJ's credibility determination with respect to Ms. Thrower.

Accordingly, for the reasons set forth in the Initial Decision, it is found and determined that the Board of Education of the Morris Hills Regional School District has born its burden of proof in this matter. Therefore, it is ordered that the Morris Hills Regional Board is not financially responsible for the education costs relating to the placement of K.O. for the 1997-98 school year.

IT IS SO ORDERED.[*]

COMMISSIONER OF EDUCATION

Date of Decision: February 8, 2001

Date of Mailing: February 8, 2001

[*] 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.