

BOARD OF EDUCATION OF THE	:	
BOROUGH OF SOUTH RIVER,	:	
MIDDLESEX COUNTY,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
NEW JERSEY STATE DEPARTMENT OF	:	
EDUCATION, DIVISION OF FINANCE,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioning Board contested the Department’s determination that student S.R., who was living in a Correction Center, was a resident of the District and that the Board was responsible for the costs of her education. The Department contended that the Board was properly assigned responsibility for S.R. because S.R.’s parent or guardian resided in the District on January 15, 1997, the date of S.R.’s placement in the Center. The Board sought restoration of \$12, 281 in State aid. The 1998-99 school year was the period in question.

The ALJ ordered the amount of \$12, 281 be restored to the State aid received by the Board, concluding that without more evidence, the Department could not show that S.R.’s parent or guardian was a resident in the District on January 15, 1997.

The Commissioner set aside the Initial Decision. Noting that the Board carried the burden in this matter, the Commissioner found that he was unable to rule in the absence of an analysis conducted under the proper burden of proof. Matter was remanded for further proceedings.

December 18, 2000

OAL DKT. NO. EDU 10117-98  
AGENCY DKT. NO. 417-9/98

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Respondent’s exceptions were untimely filed pursuant to *N.J.A.C. 1:1-18.4(a)*, in that the Initial Decision was mailed to the parties on November 6, 2000 and the exceptions were filed on November 21, 2000, outside the 13-day period prescribed by regulation.<sup>1</sup> Accordingly, the exceptions were not considered by the Commissioner in reaching his decision.

Upon careful and independent review of the record in this matter, the Commissioner is compelled to set aside the Initial Decision. Although the Administrative Law Judge (ALJ) acknowledges that the petitioning Board carries the burden of proving that respondent’s determination that S.R. was a resident of South River on January 15, 1997 was improper, he nevertheless states, “without more, *the Division of Finance cannot show that S.R.’s parent or guardian was resident in South River on January 15, 1997*” (emphasis added) (Initial

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<sup>1</sup> In that the thirteenth day from the date the ALJ’s initial decision was mailed to the parties fell on Sunday, November 19, 2000, exceptions were due on or before the next day.

Decision at 9, 10), thereby indicating that he looked to respondent to demonstrate that its determination was correct. However, as the Commissioner recently underscored:

[I]t 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. (*Board of Education of the Borough of Bradley Beach v. New Jersey State Department of Education, Division of Finance*, Commissioner Decision, July 3, 2000, Slip Opinion at 8-9)

In the absence of analysis under the proper burden of proof, the Commissioner is reluctant to make a final ruling in this matter. Accordingly, the Initial Decision is set aside and the matter is remanded to the Office of Administrative Law for analysis and such further proceedings as may be necessary to decide this matter under the proper burden of proof.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: December 18, 2000

Date of Mailing: December 18, 2000

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<sup>2</sup> 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.