

BOARD OF EDUCATION OF LOWER :
 CAMDEN COUNTY REGIONAL :
 SCHOOL DISTRICT NO. 1, :
 PETITIONER, :

V. : COMMISSIONER OF EDUCATION

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

RESPONDENT. :

SYNOPSIS

Petitioning Board appealed determinations made by respondent Department of Education, Division of School Finance, providing that two individuals, T.J. and A.B., be assigned to the Board's district for the 1998-99 school year pursuant to the State Facilities Education Act of 1979, *N.J.S.A.* 18A:7B-1 to -13.

As to T.J., the ALJ granted summary decision to respondent, finding that because the present district of residence cannot be determined, the district of residence shall be the district in which the child resided prior to admission or placement, namely the Lower Camden County Regional High School District. As to A.B., the ALJ determined that the State has fiscal responsibility because the custodial parent for A.B. on October 15, 1997 was his mother, who resided in Philadelphia.

The Commissioner adopted the ALJ's recommended decision granting summary decision to respondent as the controversy pertains to T.J. for the reasons set forth in the initial decision. As to A.B., the Commissioner determined that the ALJ appropriately found *N.J.S.A.* 18A:7B-12(d) to be controlling, and the statute's plain meaning is that the State has fiscal responsibility for the tuition of a student placed in a State facility when the district of residence is identified to be outside of New Jersey.

AUGUST 13, 1999

OAL DKT. NOS. EDU 8578-98 and EDU 8579-98 (Consolidated)
AGENCY DKT. NOS. 369-8/98 and 370-8/98

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The record and initial decision issued by the Office of Administrative Law have been reviewed. Respondent’s exceptions were timely filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4, as was petitioner’s reply thereto.

Respondent’s exceptions urge that the Administrative Law Judge (ALJ) correctly found that the Department acted appropriately in assigning petitioner financial responsibility for T.J.’s education because it provided no evidence proving where his mother resided on October 15, 1997. Consequently, respondent asserts, the ALJ properly relied on the second prong of *N.J.A.C.* 6:20-5.3 (where the custodial parent resided at the time of the initial placement) to reach a determination regarding T.J. Petitioner’s reply exceptions urge reversal of the ALJ’s determination insofar as T.J. is concerned, maintaining, *inter alia*, that it has come forward with credible evidence to dispute respondent’s determination to assign it fiscal responsibility for T.J.’s tuition and incorporates by reference those arguments set forth in

Petitioner's Memorandum in Support of Motion to Grant Petitioner's Appeal and its Reply Brief, which were considered by the ALJ.

As to A.B., respondent urges reversal of the ALJ's determination, maintaining that the fundamental flaw in the ALJ's analysis is that he missed a step in the test for determining financial responsibility, *i.e.*, the initial decision ends at the first prong of the test for residency when it should have applied both prongs. Consequently, respondent argues that the Commissioner must reject the ALJ's finding that the State is responsible for A.B.'s tuition because his mother lived in Philadelphia, contending that the correct analysis should be the following:

1. In applying the first prong of the test, because the mother's residency was in Philadelphia, there is no New Jersey district of residence responsible for the child.
2. As the regulation states, when the New Jersey district of residence cannot be determined, it is necessary to go to the second prong of the test, or the New Jersey district of residence at the time of the initial placement. This is the missing step in the court's analysis.
3. The district in which the parent resided when [A.B.] was initially placed was petitioner, so it is responsible for A.B.'s tuition. (Respondent's Exceptions at p. 3)

Respondent also reiterates its position that a custodial parent living out-of-state does not terminate the analysis for determining district of residence, arguing that the State becomes the guarantor of tuition only if there is no New Jersey district of residence at the time of the initial placement.

Petitioner's reply exceptions regarding A.B. urge that it is respondent who is misreading the initial decision, contending that the State's characterization that the ALJ "missed a step" is incorrect. Petitioner further maintains that it is clear on pages 14-15 and page 19 of

the initial decision that the ALJ squarely dealt with the arguments presented in respondent's exceptions. It argues that the State is erroneously equating the finding of a residence outside the State of New Jersey to be a finding that "the present district of residence" of the parent cannot be determined. However, in the instant matter the ALJ correctly determined that the district of residence for A.B. was sufficiently identified as Philadelphia; thus, based on *N.J.S.A. 18A:7B-12(d)*, the ALJ concluded that the State had responsibility for A.B.'s tuition. Petitioner further argues:

Moreover, as noted in the Commissioner's decision in *Board of Education of the City of Wildwood, Cape May County v. New Jersey State Department of Education*, [decided December 30, 1996, appeal pending State Board], if the Petitioner (Wildwood) had been better able to establish the child's mother's residence in the State of Florida on October 15 [of the year in dispute], then the State would have been responsible for the educational costs of the child pursuant to *N.J.S.A. 18A:7B-12(d)*. In the instant matter, based upon this section of the statute, the ALJ ruled that the State is to be responsible for the educational costs for A.B. As argued by Petitioner [herein] and as adopted by the ALJ in his opinion, "the Department's argument inappropriately chooses to insert the words New Jersey into the legislative directive." (Petitioner's Reply at pp. 2-3)

Upon review of the record, the Commissioner agrees with and adopts the ALJ's recommended decision granting summary decision to respondent as the controversy pertains to T.J. for the reasons set forth in the initial decision. As to A.B., the Commissioner determines, notwithstanding respondent's arguments otherwise, that the ALJ appropriately found *N.J.S.A. 18A:7B-12(d)* to be controlling because the custodial parent for A.B. on October 15, 1997 was his mother, who resided in Philadelphia. Consequently, the ALJ was correct in determining that, under the circumstances set forth in this matter, the State has fiscal responsibility for A.B. *N.J.S.A. 18A:7B-12* states in pertinent part:

For school funding purposes, the Commissioner of Education shall determine district of residence as follows:

b. The district of residence for children who are in residential State facilities*** shall be the present district of residence of the parent or guardian with whom the child lived prior to his most recent admission to a State facility or most recent placement by a State agency.

If this cannot be determined, the district of residence shall be the district in which the child resided prior to such admission or placement.

d. If the district of residence cannot be determined according to the criteria contained herein, *or if the criteria contained herein identify a district of residence outside of the State, the State shall assume fiscal responsibility for the tuition of the child.**** (emphasis supplied)

As correctly stated by the ALJ on page 20 of the initial decision, “[w]ords should be given their ordinary meanings unless the context clearly indicates otherwise.” Upon review of the pertinent statutes and regulations, the Commissioner finds and concludes that the wording of *N.J.S.A. 18A:7B-12* is plain in its meaning that the State has fiscal responsibility for the tuition of a student placed in a State Facility when the district of residence is identified to be outside of New Jersey. Respondent’s arguments to the contrary are deemed unpersuasive. Moreover, petitioner’s reliance on *Wildwood, supra*, to bolster its position in the instant matter has merit. Although the factual circumstances in the *Wildwood* matter differ from those herein, the holding of the Commissioner in that matter is consistent with the findings and conclusions of the ALJ and the Commissioner in the instant matter. The decision in *Wildwood* states:

[T]he Commissioner cannot confidently rely on the record as it stands to determine, with any degree of certainty, that V.M. resided in Florida on October 15, 1993, so as to absolve the Board***

from responsibility for tuition payments in this matter. (Slip
Opinion at p.11)

Accordingly, the initial decision which orders that financial responsibility rests
with petitioner for T.J. and with the State for A.B., is adopted for the reasons set forth therein.*

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

AUGUST 13, 1999

* 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.