

EDU # 8017-94
C # 366-95
EDU #10066-95
C # 569-96R
SB # 4-97

BOARD OF EDUCATION OF THE CITY :
OF WILDWOOD, CAPE MAY COUNTY, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
NEW JERSEY STATE DEPARTMENT : DECISION
OF EDUCATION, :
RESPONDENT-RESPONDENT. :

Remanded by the Commissioner of Education, October 6, 1995

Decided by the Commissioner of Education, December 30, 1996

For the Petitioner-Appellant, Bruce M. Gorman, Esq., of Counsel

For the Respondent-Respondent, JoAnn Fitzpatrick, Deputy Attorney General
(John J. Farmer, Attorney General of New Jersey)

This case involves the question of who is financially responsible for the costs of one child's placement in a State residential facility for the 1993-94 school year. M.M., the child in question, had resided with his mother in Wildwood until November 23, 1992, at which time DYFS placed M.M. with his mother's consent at the Bonnie Brae School, a State institution for troubled children. Consequently, under the applicable statute, the Wildwood school district was responsible for the costs of the placement for 1992-93.

However, in 1993, M.M.'s mother moved out of Wildwood. Under the pertinent statute, Wildwood was not necessarily responsible for the costs of the placement for 1993-94. N.J.S.A. 18A:7B-12, the statute that controls the financial responsibility for such placements, provides in pertinent part that the Commissioner of Education shall determine the district of residence for school funding purposes as follows:

- b. The district of residence for children who are in residential State facilities, or who have been placed by State agencies in group homes, private schools or out-of-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.
- c. 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....

N.J.A.C. 6:20-5.3 of the New Jersey Administrative Code defines "present district of residence" as follows:

- (a) The district of residence for school funding purposes shall be determined according to the following criteria:

- 1. The "present district of residence" of a child in a residential State facility defined in N.J.S.A. 18A:7D-3 and referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last day prior to October 16.

- 2. The "present district of residence" of a child placed by a State agency in a group home, private school or out-of-

state facility also referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's initial placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility or placement by a State agency....

3. The "district of residence" referred to in paragraph two of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey District of residence in which the child resided with his or her legal guardian immediately prior to his or her initial admission to a State facility or placement by a State agency....

Under this framework, the initial obligation for paying tuition falls on the district in which the parents reside when the placement is made. In this case, the school district of Wildwood had financial responsibility for M.M.'s placement for the 1992-93 school year.

However, the financial responsibility for the subsequent year, 1993-94, is initially on the district of residence in which the child's parent resided as of October 15 of that year. If the district of residence is outside of the state, the State is responsible for the child's tuition.

The Administrative Law Judge ("ALJ") determined that the State was responsible for M.M.'s tuition for the 1993-94 school year on the basis of his finding that M.M.'s mother was living in Orlando, Florida as of October 15, 1993. This finding was based on two days of hearing at which M.M.'s mother's landlord in Florida had testified by telephonic communication.

The Commissioner found that there was an "apparent contradiction" between the landlord's written comments and his testimony and remanded the matter to the ALJ for

additional fact-finding to “clarify the apparent discrepancy.” Commissioner’s Decision of October 6, 1995, slip op. at 7.

Following the remand, the parties agreed that a transcript of the landlord’s testimony would be helpful in resolving the “apparent contradiction,” and transcripts were ordered. The ALJ found that the landlord’s testimony clearly explained what appeared to be a gap in his written response concerning M.M.’s mother’s residence in Florida. Based on the transcript, the ALJ found that there was a mistake on the written form that the landlord had filled out in response to inquiry by a detective hired by the Wildwood Board. The ALJ then concluded, based on all of the testimony, that M.M.’s mother had resided in Orlando, Florida from June 1993 until August 1994, except for a short stay in Millville, New Jersey in January 1994. The ALJ therefore concluded that the State had financial responsibility for M.M.’s tuition for 1993-94.

The Commissioner rejected the ALJ’s determination, concluding that he could not rely on the record as it stood to determine with any degree of certainty that M.M.’s mother had resided in Florida on October 15, 1993.

The Wildwood Board appealed to the State Board of Education, arguing that the State is responsible for M.M.’s tuition for 1993-94 because his mother was living in Orlando, Florida on October 15, 1993. It further argues that the State is responsible for tuition for that year because, even if the exact whereabouts of M.M.’s mother had not been established, her present district of residence could not be determined. The Board also asserts that the State did not make an adequate effort to locate M.M.’s mother in Florida and, consequently, had come to the proceedings with unclean hands.

For the reasons that follow, we reverse the Commissioner’s decision.

As the head of this agency, the State Board of Education is the ultimate administrative decisionmaker and fact-finder in matters arising under the school laws. In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989), certif. denied, 121 N.J. 615 (1990); Dore v. Bedminister Tp. Bd. of Ed., 185 N.J. Super. 447, 452 (App. Div. 1982). Our review of the record, including the transcripts from the hearings held in the Office of Administrative Law, shows that the ALJ correctly concluded that M.M.'s mother was residing in Florida on October 15, 1993. Furthermore, the ALJ's decision on remand accurately explains the minor discrepancy between the landlord's remarks on the written form and his testimony.

As embodied in the ALJ's decisions, the landlord identified M.M.'s mother, as well as her paramour and her second son. He recalled that the paramour was receiving dialysis treatment. Tr. 2, 29:8-12. He tracked M.M.'s mother's residence in Orlando, Florida from a one-bedroom apartment at 1261 23rd Street to a two-bedroom apartment during the period between June 1993 and September 1993. Tr. 2, 28:15-23. He traced her move to 1245 23rd Street in September 1993. Tr. 2, 31:2-4. He testified that he saw her there periodically and, specifically, that he saw her there when he visited the property prior to purchasing it. Tr. 2, 31:5-9. Moreover, his testimony was based on his business records, as well as his memory. Tr. 2, 32:23-33:6.

Based on the landlord's uncontroverted testimony, we find, as did the ALJ, that M.M.'s mother was residing in Florida on October 15, 1993. In this regard, we stress that although we are the ultimate fact-finder in this context, we have given due regard to the credibility determinations of the ALJ, who had the opportunity to hear the witnesses and judge their credibility. Close v. Kordulak Bros., 44 N.J. 589 (1965). Accordingly,

his determinations with respect to the credibility of the witnesses should be given great weight. Moreover, as a stranger to this matter, the landlord had nothing to gain from the outcome of the case. In the absence of anything more than the one minor discrepancy explained by the ALJ, there is no reason to doubt his veracity.

Hence, for the reasons set forth herein, as well as those expressed by the ALJ in his decisions, we find that M.M.'s mother was residing in Florida on the relevant date and, consequently, that the State is responsible for M.M.'s tuition for the 1993-94 school year. In view of our findings, we need not resolve where financial responsibility would lie if we had been unable to determine where M.M.'s mother was living on October 15, 1993.

Attorney exceptions are noted.

June 7, 2000

Date of mailing _____