

BOARD OF EDUCATION OF THE :  
BOROUGH OF PROSPECT PARK, :  
PASSAIC COUNTY, :

PETITIONER, :

V. :

STATE OF NEW JERSEY, :  
DEPARTMENT OF EDUCATION, :  
DIVISION OF FINANCE; STATE OF : COMMISSIONER OF EDUCATION  
NEW JERSEY, DEPARTMENT OF :  
EDUCATION, BUREAU OF SCHOOL : DECISION ON REMAND  
FINANCE; DIVISION OF YOUTH AND :  
FAMILY SERVICES, BERGEN COUNTY :  
DISTRICT OFFICE, NEW JERSEY :  
DEPARTMENT OF HUMAN SERVICES; :  
DIVISION OF YOUTH AND FAMILY :  
SERVICES, PASSAIC COUNTY :  
DISTRICT OFFICE, NEW JERSEY :  
DEPARTMENT OF HUMAN SERVICES, :

RESPONDENTS. :  
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### SYNOPSIS

In prior decision, Commissioner had found petitioning district to be the district of residence for tuition purposes for institutionalized child L.L., who had been placed in a private school by the Division of Youth and Family Services (DYFS) without consulting petitioner as required by regulation. Commissioner remanded for factual findings as to whether emergency circumstances existed such as would justify DYFS's apparent noncompliance with rule.

On remand, the ALJ elicited testimony and evidence and concluded that DYFS had ample time within which to consult with petitioner prior to placing L.L. in the private school, but failed to do so.

Commissioner adopted factual findings of ALJ and held that petitioner is in fact L.L.'s district of residence and, as such, is generally responsible for her education. However, under the particular circumstances established herein, which clearly demonstrated noncompliance by DYFS with rules regarding consultation prior to placement, Commissioner declined to hold petitioning district responsible for tuition for period at issue (June 1992 and 1992-93 school year).

SEPTEMBER 25, 1997

OAL DKT NO. EDU 1512-96 (EDU 3045-94 ON REMAND)  
AGENCY DKT. NO. 376-11/93

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	:	
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The record of this matter and the initial decision on remand of the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon review, the Commissioner determines to adopt the factual findings and conclusions of the ALJ. These have been derived in response to the Commissioner's prior directive to ascertain whether emergency conditions might have existed surrounding the placement of L.L., so as to justify the failure of DYFS to comply with *N.J.A.C. 6:28-7.4(b)5(ii)* by conferring with petitioner's chief school administrator prior to L.L.'s placement in the George Washington School.

This question having now been answered in the negative, the Commissioner concurs with the conclusion of the ALJ's earlier initial decision that the Commissioner may not

hold petitioner responsible for the educational costs associated with L.L.'s placement during the period at issue. Notwithstanding that the statutory scheme requires such costs to be borne by the district of residence, that provision is qualified by regulation requiring that the chief school administrator (or designee) of that district is to be consulted prior to any placement for which it may be held fiscally responsible. The Commissioner recognizes that circumstances may arise where such consultation is not strictly possible, as observed by respondents; there the intent of the law would be met by compliance at the earliest date feasible under the circumstances.\* Here, however, there clearly was ample opportunity for DYFS to have consulted with petitioner prior to its placement of L.L. in the George Washington School, so that the controlling regulation was honored neither in letter nor intent, and, thus, the precedent condition for ultimate district responsibility was not met.

Accordingly, the initial decision of October 23, 1995 and the within decision on remand, as amplified by the Commissioner's prior decision and herein, are affirmed. The Prospect Park Board of Education is held to be the district of residence for L.L. and, as such, is the district generally responsible for her education; however, under the circumstances herein established, the Commissioner declines to hold the district responsible for L.L.'s educational costs for June 1992 and the 1992-93 school year.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

SEPTEMBER 25, 1997

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\* The Commissioner here notes that allowing for a finding of substantial compliance with this rule by taking operative individual circumstances into account does not constitute a "waiver" of the rule, as suggested by the Board (Initial Decision, at p. 7).