

| | | |
|--------------------------------|---|---------------------------|
| TEANECK COMMUNITY CHARTER | : | |
| SCHOOL, | : | |
| | : | |
| PETITIONER, | : | |
| | : | |
| V. | : | COMMISSIONER OF EDUCATION |
| | : | |
| BOARD OF EDUCATION OF TEANECK, | : | DECISION ON MOTION |
| BERGEN COUNTY, | : | |
| | : | |
| RESPONDENT. | : | |

SYNOPSIS

Petitioning Charter School sought order from the Commissioner requiring the Board to provide petitioner with 90% of the local levy per student, as well as transportation or aid in lieu of transportation, effective from the commencement of the Charter School as required by statute and its implementing regulations. Petitioner also sought pre-judgment interest.

Commissioner determined that the statutory and regulatory framework for charter schools does indeed impose on districts the dual requirement to pay directly to the charter school within their districts the specific level of funding for resident charter school students as determined by *N.J.S.A. 18A:36A-12* and to provide transportation to those students in such a way that the district bears the cost of transportation, not the charter school. Commissioner granted summary decision to petitioner insofar as he directs the Board to pay promptly to petitioner the difference between the amounts it already paid and those amounts owing and due petitioner pursuant to *N.J.S.A. 18A:36A-12*. Commissioner ordered the issue of pre-judgment interest transmitted to OAL for a plenary hearing which is to be strictly limited to petitioner’s allegation that the Board acted in bad faith and/or deliberate violation of law, unless petitioner withdraws its claim within ten days of receipt of this decision on motion.

| | | |
|--------------------------------|---|---------------------------|
| TEANECK COMMUNITY CHARTER | : | |
| SCHOOL, | : | |
| | : | |
| PETITIONER, | : | |
| | : | |
| V. | : | COMMISSIONER OF EDUCATION |
| | : | |
| BOARD OF EDUCATION OF TEANECK, | : | DECISION ON MOTION |
| BERGEN COUNTY, | : | |
| | : | |
| RESPONDENT. | : | |

For Petitioner: Lois H. Goodman, Esq. (Carpenter, Bennett & Morrissey)

For Respondent: Sidney A. Sayovitz, Esq. (Schenck, Price, Smith & King)

PROCEDURAL HISTORY

This matter was opened before the Commissioner of Education by way of the filing of a Petition of Appeal on January 11, 1999 by the Teaneck Community Charter School (petitioner) seeking an order from the Commissioner requiring the Board of Education of Teaneck (respondent) to provide petitioner with 90% of the local levy per student, as well as transportation or aid in lieu of transportation, effective from the commencement of the Charter School as required by statute and its implementing regulations. On January 29, 1999, petitioner submitted by fax transmission a Motion for Summary Judgment and Letter-Memorandum in support thereof. In addition to the aforesaid relief sought of the Commissioner, petitioner's Motion for Summary Judgment requested pre-judgment interest. This was followed by the filing of an Amended Petition of Appeal on February 4, 1999, the sole amendment of which was the request for pre-judgment interest.

On February 1, 1999, respondent filed its answer to the petition requesting dismissal of the petition, averring that the regulations adopted by the Department of Education at

N.J.A.C. 6A:11, subchapter 4 are in conflict with the Charter School Program (Act), *N.J.S.A.* 18A:36A-1 *et seq.* and the New Jersey Constitution. On February 1, the Director of the Bureau of Controversies and Disputes sent the parties a letter indicating that the Commissioner would decide the Motion for Summary Judgment pursuant to the authority granted him by *N.J.A.C.* 6:24-1.13. Respondent was provided ten (10) days from receipt of the letter to submit a reply brief or letter-memorandum in response to the Motion for Summary Judgment. Respondent's reply was filed on February 16, 1999. Petitioner was accorded five (5) days from receipt of respondent's reply brief or letter-memorandum to file a response thereto. Petitioner's response was received on February 23, 1999; whereupon, the record relative to the Motion for Summary Judgment closed.

BACKGROUND

In September 1998, the Teaneck Community Charter School commenced operations pursuant to a charter granted in accordance with *N.J.S.A.* 18A:36A-1 *et seq.* Pursuant to *N.J.S.A.* 18A:36A-12, respondent, as the district of residence of the Charter School, was required to pay petitioner 90% of the local levy budget per pupil for each child residing in the district who attends the Charter School. In accordance with *N.J.S.A.* 18A:36A-13 and *N.J.A.C.* 6A:11-4.1 and 4.2, respondent must provide transportation, or aid in lieu of transportation, to petitioner's students who reside in Teaneck, on the same terms as respondent provided such transportation to the students attending its District's schools.

On October 14, 1998, respondent adopted a Resolution which reads as follows:

WHEREAS, the Board of Education has been directed to provide transportation to students of the Teaneck Community Charter School; and

WHEREAS, the Board of Education has reviewed the Charter School Program Act of 1995 and understands that the Act limits the payments to be made by the Board of Education to 90% of the local levy budget per pupil; and

WHEREAS, the Board of Education has determined that the additional costs of transportation will result in payments by the Board of Education in excess of the 90% cap; now, therefore be it

RESOLVED, that the School Business Administrator is directed to subtract the costs of transporting the Charter School pupils from the payments to be made to the Charter School by the Board of Education, pursuant to *N.J.S.A. 18A:36A-12*. (Petition, Exhibit A)

Upon adoption of the Resolution, respondent commenced to deduct the costs of providing transportation to students residing within the District who attended the Charter School. For the months of November and December 1998, respondent deducted the amount of \$10,286 from the funds it transmitted to petitioner.

PETITIONER'S POSITION

Petitioner avers, *inter alia*, that respondent's decision to deduct transportation costs from the required 90% of the local levy payment is without basis in statute or regulations, and, thus, constitutes a clear violation of respondent's obligations. *N.J.S.A. 18A:36A-12* provides in pertinent part that

[t]he school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district a presumptive amount equal to 90% of the local levy budget per pupil for the specific grade level in the district. At the discretion of the commissioner and at the time the charter is granted, the commissioner may require the school district of residence to pay directly to the charter school for each student enrolled in the charter school an amount equal to less than 90%, or an amount which shall not exceed 100% of the local levy budget per pupil for the specific grade level in the district of residence.***

Petitioner further maintains that the local board of education also bears responsibility for the provision of transportation services to students within the District as set forth in *N.J.S.A. 18A:36A-13* which reads

[t]he students who reside in the school district in which the charter school is located shall be provided transportation to the charter

school on the same terms and conditions as transportation is provided to students attending the schools of the district.***

Petitioner also avers that the State Board of Education regulations for charter schools provide further guidance as to the financial obligations of a local board of education, specifically citing the following provisions of *N.J.A.C. 6A:11-4.1* in support of this contention.

(a) A district board of education shall have the following responsibilities for transportation:

1. Transportation or aid in lieu of transportation shall be provided pursuant to *N.J.S.A. 18A:39-1 et seq.* to students in kindergarten through grade eight who live more than two miles and to students in grades nine through 12 who live more than two and one-half miles from the charter school that they attend.***

2. The transportation of students to and from a charter school shall be the responsibility of the district board of education of the school district in which each student resides.

Thus, petitioner argues, respondent is responsible for providing to it the requisite 90% of the local levy budget per pupil. Additionally, respondent is responsible for providing the students of the District with transportation or aid in lieu of transportation. Petitioner further avers that nowhere in the Act is there any indication that the 90% requirement was intended to cap all payments by a local board. Of this, petitioner states

***By contrast, the requirement that the board provide *either* transportation or aid in lieu of transportation makes clear that the intent was to create an obligation in addition to that posed by the 90% requirement. By deducting the costs of transportation from the amount paid to the Charter School each month, the Board has violated its clear statutory obligations. (emphasis in text) (Petitioner's Brief at p. 3)

Petitioner further contends that respondent's position is belied by the comments published in the *New Jersey Register (N.J.R.)* following publication of the proposed charter school rules, in particular, the first comment under the transportation heading which clearly indicates that school districts are allowed to retain 10% of the local levy budget per pupil to cover its costs for administering the program, including transportation (29 *N.J.R. 3493*, August 4, 1997, Subchapter 4)

Given the above, petitioner argues that respondent should be made to reimburse the charter school for any and all amounts improperly deducted from the requisite 90% payment, as well as interest on that amount, in accordance with *N.J.A.C. 6:24-1.16*, since respondent's refusal to make full payments clearly required by law was either in bad faith or in deliberate violation of law.

RESPONDENT'S POSITION

Respondent rejects petitioner's position that the Act, *N.J.S.A. 18A:36A-1*, should be interpreted as to require a district board of education to pay 90% of the local levy budget *and* to pay for transportation costs for each pupil, arguing that such an interpretation is inconsistent with the plain meaning of the Act and with the intention of the Legislature. Citing 29 *N.J.R.* 3494, Subchapter 7, response to Comment 1, respondent argues that it is clear the Legislature and the Department of Education (DOE) used a funding formula based on a per pupil method because it was regarded as the fairest method of determining school costs. Respondent further maintains that the per pupil methodology is related to and reflective of costs and given the provisions of *N.J.S.A. 18A:36A-12* recited above and DOE regulatory comments, it is apparent that the Legislature and DOE wanted to limit a charter school to 90% of the per pupil formula and expected them to live within that cap. Moreover, respondent emphasizes that the Commissioner was given the authority to provide additional funding not to exceed 100% of the local levy budget per pupil, but at no point in the Act or in the regulations is there any indication that the charter school was to receive more than the 90% level, except when the Commissioner affirmatively chose to provide additional funding not to exceed 100%.

Respondent next argues that petitioner's position would subvert the clear intent of *N.J.S.A. 18A:36A-12* because petitioner would have the Teaneck Board pay more than 100% of the per pupil funding formula, *i.e.*, the 90% level *and* the costs of transportation, even though the Commissioner has neither authorized nor been requested to authorize a higher level. Respondent further avers that, contrary to petitioner's assertion, it does provide transportation to the Charter

School students on the same terms and conditions as provided to Teaneck public school students.

Respondent contends, *inter alia*, that

N.J.S.A. 18A:36A-13 is not a funding section as no reference is made therein to “payments” or “funding levels.” Rather, this section requires that a local board of education provide transportation to charter school pupils, an activity not in dispute. Had the Legislature intended *N.J.S.A.* 18A:36A-13 to be a funding section, it could have provided that school districts shall pay to the Charter School the costs of transportation, utilizing language similar to that used in the previous section, *N.J.S.A.* 18A:36A-12. In fact, the only section in the Act dealing with funding is *N.J.S.A.* 18A:36A-12, which caps funding levels at 90%, except when authorized by the Commissioner***. The position advocated by [petitioner] plainly ignores the funding cap of *N.J.S.A.* 18A:36A-12.*** (Respondent’s Reply Brief at p. 4)

Respondent believes it noteworthy that if the Commissioner were to approve a 100% funding level, petitioner’s position would result in 100% of the pupil level plus transportation costs. Of this, respondent states “[i]t is respectfully submitted that *N.J.S.A.* 18A:36A-13 simply indicates that providing transportation is the responsibility of the local district but does not indicate that the costs of transportation shall be provided above the 90 –100% level.” (*Id.* at pp. 4-5) Respondent also avers that the charter school regulations do not require additional funding but merely indicates that the transportation of students to and from a charter school shall be the responsibility of the school district in which the student resides, a responsibility it recognizes and accepts. See *N.J.A.C.* 6A:11-4.1(a)(2).

Additionally, respondent argues that petitioner is seeking funding for transportation two times because, it argues, the local levy budget per pupil, as set forth in *N.J.S.A.* 18A:36A-12, already includes the cost of transportation. Consequently, respondent contends that funding the Teaneck Charter School at the 90% level already pays for 90% of the costs of transportation and by requesting it to pay an additional transportation cost, petitioner seeks to be paid twice. Of this, respondent states that neither the Act, nor the regulations and the DOE’s regulatory comments

indicate that charter school funding requires payment to the Charter School twice for transportation costs, and to argue otherwise simply makes no sense.

Respondent disagrees with petitioner's arguments relative to the DOE regulatory comments on transportation previously recited above, emphasizing that the DOE noted only that the 10% difference in per pupil formula provides districts with funds to cover *administrative* costs, not the cost of *transportation*.

Lastly, respondent objects to and vigorously denies the allegation in the Amended Petition of Appeal that the Teaneck Board acted in bad faith and/or in deliberate violation of the applicable statute and rules and is, thus, entitled to pre-judgment interest. With respect to this, respondent argues, *inter alia*, that it was inappropriate for a motion for summary judgment to be filed before a party has had an opportunity to submit its responsive pleading. Moreover, according to respondent, such an allegation constitutes a disputed fact, which has not been proven either in the form of an affidavit or through testimony; therefore, it cannot be decided via summary judgment but must be the subject to a full evidentiary hearing.

In response to the above, petitioner contends that it is respondent who is misinterpreting the statute, arguing, *inter alia*, that respondent is reading the term "provide" too narrowly and that it is clear from reading *N.J.S.A. 18A:36A-13* that "provide" means to pay for such transportation. Moreover, petitioner avers that, contrary to respondent's arguments otherwise, the Teaneck Board is not providing the charter school students with transportation on the same terms and conditions as the District's students because those students are not required to pay their own costs of transportation to school. Thus, argues petitioner, respondent must bear the costs of transportation of the charter school students, if transportation for charter school students is to be on the same terms and conditions as other students in the District. Finally, petitioner maintains that there are no issues of fact with respect to respondent's actions or motives in this matter that need to be determined before awarding it pre-judgment interest.

COMMISSIONER'S DETERMINATION

Initially, the Commissioner will address the issue of whether this matter is ripe for summary judgment. Upon review of the parties' submissions, it is apparent that the only genuine issue of material fact in dispute in this matter relates to the allegation that respondent acted in bad faith and/or in deliberate violation of the law. Consequently, the Commissioner determines that deciding that issue on a summary judgment basis is not appropriate. Accordingly, the Commissioner's decision on motion herein will not address the pre-judgment interest issue raised in petitioner's Motion for Summary Judgment and subsequently added to the Amended Petition of Appeal.

The substantive issue presented in the instant motion is whether or not the statutes for the creation of charter schools enacted by the New Jersey Legislature and the regulations developed by the DOE to implement those statutes require a local district board of education to pay funds directly to a charter school at the levels as set forth in *N.J.S.A. 18A:36A-12* and to provide transportation to the charter school students who reside in the district in such a way that the district bears the cost of the transportation *over and above* the level of funding required by *N.J.S.A. 18A:36A-12*. Upon a thorough review of the position of the parties and relevant statutory and regulatory provisions, the Commissioner is in full agreement with petitioner that the statutory and regulatory framework for charter schools does indeed impose on districts the dual requirement to pay directly to the charter school within their districts the specific level of funding for resident charter school students as determined by *N.J.S.A. 18A:36A-12* and to provide transportation to those students in such a way that the district bears the cost of transportation, not the charter school. The Commissioner reaches this determination for the reasons set forth below.

Contrary to respondent's arguments that the statutory and regulatory framework for charter school payment permits the deduction of the cost of transportation from monies it must pay

a charter school because the **maximum amount** to be paid by a district is capped at 90% of the local levy budget per pupil for the specific grade level, unless the Commissioner approves otherwise, the Commissioner concludes that *N.J.S.A.* 18A:36A-12 establishes the mechanism by which the *basic operational costs* of a charter school are to be funded, *i.e.*, through the **direct** payment of revenues by the school district of residence to the charter school at the presumptive 90% rate as discussed *ante*, unless the Commissioner, at the time the charter is granted, sets a different rate which may be lower than 90% but not higher than 100%. *N.J.S.A.* 18A:36A-12 also delineates the other **direct** payment responsibilities of school district to a charter school to support the charter school's *basic operational costs*, *i.e.*, the payment of any categorical and federal aid attributable to resident students, providing the students are receiving the appropriate categorical services.

Furthermore, pursuant to *N.J.S.A.* 18A:36A-13, the Legislature imposed the responsibility for transportation of charter school students on the school district of residence, not on the charter school, and, as set forth in the Legislative Fiscal Estimate to Senate Bill, No. 1796 dated September 14, 1995 which established charter schools in New Jersey, the Legislature determined that “***the district would be eligible for State aid for that transportation.” Upon thorough consideration of the legislative provisions for the funding of charter schools, the Commissioner concludes that transportation is *not* a basic operational function of the charter school subject to funding through the revenue provisions of *N.J.S.A.* 18A:36A-12. This being so, the Commissioner finds and determines that the financial obligation for transportation set forth in *N.J.S.A.* 18A:36A-13 is an **additional** financial obligation on school districts, separate and apart from that imposed by *N.J.S.A.* 18A:36A-12, for which the district receives State aid. The Commissioner further concludes that, contrary to respondent's arguments, there is no statutory or legislative authority to deduct the cost of transporting students from the per pupil payment which school districts are mandated to pay directly to charter schools as operational revenue.

Lastly, the Commissioner concludes that respondent's argument contending that petitioner's position is tantamount to double-dipping, because the local levy budget per pupil referenced in *N.J.S.A. 18A:36A-12* includes transportation costs, is misplaced. When the Charter School Program Act of 1995, *N.J.S.A. 18A:36A-1 et seq.*, was enacted by the Legislature, the financing for public education was controlled by the Quality Education Act of 1990 (QEA), *N.J.S.A. 18A:7D-1 et seq.* Hence, the per pupil funding mechanism devised for the Act by the Legislature at that time was based on the local levy budget provision of QEA. *N.J.S.A. 18A:7D-3* defined local levy budget as "the sum of the foundation aid and transition aid received by a school district and the district's local levy for the general fund." With the enactment of *L.1993, c. 83*, the Legislature approved one tax levy for a general fund budget for school districts instead of separate tax levies for current expenses and capital outlays as had previously existed. While the *general fund budget* included pupil transportation costs, the cost for transportation was not part of a district's *local levy* for the general fund because the statutory scheme for transportation aid envisioned full support for providing required pupil transportation. *N.J.S.A. 18A: 7D-19*.

As correctly noted by the parties, *N.J.S.A. 18A:36A-12* and *N.J.A.C. 6A:11-1.2* cap the presumptive amount to be paid directly to a charter school located in a district at 90% of the local levy per pupil for the specific grade level, unless the Commissioner approves another percentage which may be less than 90% but no greater than 100% of the per pupil levy. However, CEIFA does not include the terminology "local levy budget" as contained in the Charter School Act of 1995, *N.J.S.A. 18A:36A-12* and *N.J.S.A. 18A:7D-1 et seq.* (QEA), the school finance act which preceded CEIFA.¹ Therefore, it is necessary to examine the specific definitions relevant to the controverted matter herein as they are currently set forth in *N.J.A.C. 6A:11-1.2*.

¹ As noted by the DOE in 29 *N.J.R.* 3495, Subchapter 7, response to Comment 3, "*N.J.S.A. 18A:36A-1 et seq.* was enacted prior to the new funding laws with the 'local levy per pupil for the specific grade level' having no meaning under *N.J.S.A. 18A:7F-1 et seq.* [the Comprehensive Education Improvement and Financing Act of 1996 or CEIFA].****"

“Local levy budget per pupil for the specific grade level” starting with the **1998-1999 school year means the “program budget per pupil.”***** “Local levy budget per pupil for the specific grade level” is based on the prebudget year of the district of residence and non-resident district(s). (emphasis supplied)

“Program budget” based on the prebudget year means the sum ***of (1) core curriculum standards aid, (2) supplemental core curriculum standards aid, (3) stabilization aid (including supplemental stabilization aid and supplemental tax reduction aid), (4) designated general fund balance, (5) miscellaneous local general fund revenue and (6) the district’s general fund tax levy.***

“Program budget per pupil” [is defined as] the apportionment among the district of residence and non-resident district’s October 15 weighted resident enrollment consistent with *N.J.S.A. 18A:7F-12* by grade category and then divided by the same districts’ resident enrollment by grade as of October 15.***

Review of these definitions demonstrates that transportation aid is not a part of the regulatory or statutory framework upon which “local levy budget per pupil for the specific grade level” is currently based because the statutory scheme for transportation aid under CEIFA (*N.J.S.A. 8A:7F-25*), like that of its predecessor QEA, also envisions full support of the cost of providing required pupil transportation. Moreover, as indicated in the Legislative Fiscal Estimate for the Charter School Senate Bill, No. 1796, State aid for transportation of charter school students goes to the district providing such transportation. Consequently, respondent’s double-dipping arguments with respect to the payment of transportation costs to charter schools must fail when viewed in light of the statutory scheme, both as it existed at the time of enactment and at present

Accordingly, the Commissioner grants summary decision to the Teaneck Community Charter School insofar as he directs the Teaneck Board of Education to pay promptly to the Charter School the difference between the amounts it has already paid and those amounts owing and due the Charter School pursuant to *N.J.S.A. 18A:36A-12*, in conformance with this decision. He further orders that all payments henceforth made by respondent to the Teaneck Community Charter School must be calculated in the same manner. Since the issue of pre-judgment interest

involves a genuine issue of material fact, that issue will be transmitted to the Office of Administrative Law for a plenary hearing which shall be strictly limited to petitioner's allegation that respondent has acted in bad faith and/or deliberate violation of the law, unless petitioner notifies the Commissioner within ten (10) days of receipt of this decision on motion that it desires to withdraw this claim.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

March 30, 1999

² 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.