

BOARD OF EDUCATION OF THE CITY :
OF MARGATE, ATLANTIC COUNTY, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY : DECISION
 OF ATLANTIC CITY, ATLANTIC :
 COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

The Board of Education of the City of Margate filed an appeal with the Commissioner which sought an order determining that it did not have any obligation to pay the Atlantic City Board of Education \$175,000, representing a tuition payment reached during a settlement for a unilateral placement related to a special education student from Margate. Atlantic City and Margate participate in a sending/receiving agreement for the purpose of educating Margate’s high school students in grades 9 through 12; further, Margate contracts with Atlantic City to provide educational services for its high school special education students, and the contract states that any under-billed special education tuition costs will be charged to the sending district. On December 15, 2009, Atlantic City reached a settlement with F.M., the parent of K.C., wherein Atlantic City agreed to pay \$175,000 towards K.C.’s tuition for various out-of-district special education placements. Margate was not a party to the former litigation or settlement but, on December 18, 2009, received request from Atlantic City to remit the \$175,000 tuition payment as soon as possible. Margate denied responsibility for the tuition. Thereafter, the parties sought assistance from the Executive County Superintendent (ECS) to resolve this controversy, but were advised on February 3, 2010 that the ECS did not have jurisdiction and that the matter needed to be decided by the Commissioner. Margate filed its appeal with the Commissioner on October 7, 2010. Atlantic City filed a motion to dismiss the petition pursuant to the 90-day limitation period set forth at *N.J.A.C.* 64:3-1.1(a)(i).

The ALJ found, *inter alia*, that: Margate should have been aware in December 2009 that one of its residents was in need of, and approved for, \$175,000 of extraordinary special education services; Margate’s argument that the date from which the 90 days must be calculated is July 19, 2010 – the date when Atlantic City actually billed Margate for extraordinary special education services – is unpersuasive; and Margate is the legal, natural and logical district to bear the cost associated with the needs of its residents, and was obligated by contract to remit extraordinary special education costs to Atlantic City. Accordingly, the ALJ dismissed the petition as untimely.

Upon full consideration, the Commissioner concurred with the ALJ and adopted the Initial Decision as the final decision in this matter; the petition was dismissed as untimely.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

June 2, 2011

OAL DKT. NO. EDU 11368-10
AGENCY DKT. NO. 590-10/10

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Margate Board of Education (Margate) and the Atlantic City Board of Education’s (Atlantic City) reply thereto.

Margate takes exception to the Administrative Law Judge’s (ALJ) determination that the 90-day statute of limitation period began to run in December 2009 when Margate received notice of the Settlement Agreement that Atlantic City entered into involving special education services for one of Margate’s residents. In its exceptions, Margate contends that the ALJ erred by applying a standard for adequate notice used in school employment cases, without factually distinguishing the circumstances in this matter. Margate claims that the cases relied upon by the ALJ did not involve an “extraordinary service” for a special education student and the direct billing for that service. Based on the circumstances in this case, Margate argues that its petition was timely filed on October 9, 2010 because the 90-day time period did not begin to run until Margate received Atlantic City’s July 19, 2010 bill for payment. Finally, Margate

maintains that the ALJ made a number of findings regarding the nature of the parties send/receive relationship that are not relevant to the narrow limitations issue.

In reply, Atlantic City urges the adoption of the Initial Decision dismissing Margate's petition as untimely. Atlantic City contends that the ALJ properly determined that the cause of action accrued in December 2009 when Margate had sufficient notice of the Settlement Agreement, and that Atlantic City determined Margate was responsible for making the settlement payments because the settlement involved special education services for one of Margate's residents. Atlantic City argues that – since Margate failed to make the payments required under the Settlement Agreement – it was forced to make the payments, and then seek reimbursement from Margate – the circumstances of which did not change Atlantic City's position that Margate was responsible for the payments. Finally, Atlantic City maintains that the ALJ properly applied the case law regarding the standard for receipt of adequate notice under *N.J.A.C. 6A:3-1.3(i)*, emphasizing that the same 90-day limitations period is applied to all cases involving actions of school boards of education.

Upon such review, the Commissioner concurs with the ALJ's determination that Margate's October 9, 2010 petition was not timely filed in accordance with *N.J.A.C. 6A:3-1.3(i)*. Pursuant to *N.J.A.C. 6A:3-1.3(i)*, a petition must be filed "no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party or agency, which is the subject of the requested contested case hearing." It is undisputed that in December 2009, Margate received notice of the executed Settlement Agreement, which is the subject of the case, along with notice of Atlantic City's position that Margate was responsible for making the settlement payments pursuant to the parties send/receive relationship. The Commissioner is not persuaded by the exceptions filed by Margate in which it

argues that despite having notice of the Settlement Agreement in December 2009, it was the actual July 19, 2010 bill that it received from Atlantic City for reimbursement of the settlement payments that triggered the 90-day limitations period.

In addition to receiving notice of the Settlement Agreement in December 2009, the dispute for responsibility of the payments due under the Settlement Agreement was brought to the attention of the Executive County Superintendent in February 2010, at which time Margate denied any responsibility for the settlement payments. The Executive County Superintendent informed the parties in February 2010 that he did not have jurisdiction to resolve the dispute and that if they could not reach an agreement on the issue, a petition should be filed with the Bureau of Controversies and Disputes. Even assuming, arguendo, that the 90-day limitation period did not begin to run until after the Executive County Superintendent informed the parties that the Commissioner had jurisdiction over the matter, Margate's October 2010 petition is still untimely. Accordingly, the petition of appeal is dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 2, 2011

Date of Mailing: June 2, 2011

¹ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.