

BOARD OF EDUCATION OF THE TOWN :
OF BOONTON, MORRIS COUNTY, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY STATE DEPARTMENT OF : DECISION
 EDUCATION AND BOARD OF :
 EDUCATION OF THE BOROUGH OF :
 WHARTON, MORRIS COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

The petitioning Board challenged the determination of the New Jersey Department of Education, Office of School Funding (NJDOE) that Boonton is the district with financial responsibility for the educational services provided to Z.M. – a special education student placed in a residential facility by the Department of Children and Families – during the 2011-2012 school year, pursuant to the State Facilities Education Act, *N.J.S.A. 18A:7B-1 et seq.* Petitioner also asserted that the Wharton Board of Education was responsible for Z.M.’s educational costs because Z.M. and his mother had resided in Wharton prior to September 2010. Additionally, petitioner argued that the State Facilities Education Act is unconstitutional as applied to Boonton because the NJDOE and wealthier school districts have greater resources to finance Z.M.’s education; accordingly, the instant matter raises an “as applied” constitutional challenge rather than a “facial” constitutional challenge.

The ALJ found, *inter alia*, that: petitioner has withdrawn its challenge as to which local district is required to pay for Z.M.’s tuition under *N.J.S.A. 18A:7B-12*; therefore, only petitioner’s constitutional challenge needed to be addressed; the Appellate Division, rather than the OAL, is the appropriate forum to decide the constitutionality of *N.J.S.A. 18A:7B-2(a)* as there are no material facts in dispute; because petitioner raises a purely legal, facial challenge to the statute, the Commissioner of Education does not have jurisdiction. The ALJ concluded that because the petitioner withdrew its challenge regarding which local district is responsible for Z.M.’s tuition, this appeal is moot.

Upon an independent review of the record, the Commissioner adopted the Initial Decision as the final decision in this matter and dismissed the petition as moot.

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.

April 10, 2014

OAL DKT. NO. EDU 12227-12
AGENCY DKT. NO. 222-8/12

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge that the Commissioner lacks jurisdiction to rule on petitioner's facial challenge to the constitutionality of *N.J.S.A. 18A:7B-2(a)*, and that the remaining issues raised in the Petition of Appeal have been rendered moot. Accordingly, the recommended decision of the ALJ is adopted for the reasons expressed therein and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 10, 2014

Date of Mailing: April 14, 2014

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.