208-17

BOARD OF EDUCATIO N OF THE TOWNSHIP OF PISCATAWAY, MIDDLESEX COUNTY,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
NEW JERSEY DEPARTMENT OF EDUCATION, OFFICE OF SCHOOL FINANCE,	:	DECISION
RESPONDENT,	:	
AND	:	
HATIKVAH INTERNATIONAL ACADEMY CHARTER SCHOOL, INC., AND COLLEGE ACHIEVE CENTRAL CHARTER SCHOOL,	:	
RESPONDENTS- INTERVENORS	:	

SYNOPSIS

The petitioner sought a declaratory ruling from the Commissioner with respect to the Piscataway Township Board of Education's (Piscataway or Board) responsibilities under *N.J.S.A.* 18A:36A-12(b) – part of the Charter School Program Act of 1995 (Act). Petitioner filed a motion for summary decision which sought a determination that, under *N.J.S.A.* 18A:36A-12(b), "financial responsibility for charter school attendance is limited to school districts formally designated as the 'district of residence,' or within a 'region of residence,' in a charter school's approved charter." The Board argued that it is not obligated to pay for its resident students to attend charter schools located outside of Piscataway that do not include Piscataway as the "district of residence" or as part of the "region of residence" specified in their charter. The respondent filed a cross-motion which sought a determination that "the language and history of the Act, and its implementing regulations, clearly demonstrate that resident districts are responsible for paying for their students to attend charter schools regardless of the charter school's location." Intervenors Hatikvah International Academy Charter School and College Achieve Central Charter School opposed petitioner's motion for summary decision.

The ALJ found, *inter alia*, that: the legislative history of this matter, the overall purpose of the Act and its specific provisions support the conclusion that a school district must pay for its residents to attend charter schools, regardless of the charter schools' locations; further, the State Board, through its adoption of *N.J.A.C.* 6A:23A-15.2 to 15.3, has implemented *N.J.S.A.* 18A:36A-12(b) by requiring non-resident districts to pay for their students to attend charter schools located in other districts. The ALJ concluded that Piscataway must, in accordance with *N.J.S.A.* 18A:36A-12(b), pay the charter school for each Piscataway resident who is enrolled in that charter school, regardless of where the charter school is located; further, the ALJ noted that if petitioner wished to challenge the validity of the Department's regulations, the proper venue for such challenge would be the Appellate Division in accordance with *R.* 2:2-3(2).

Upon careful consideration and review, the Commissioner adopted the ALJ's recommended decision as the final decision in this matter. Petitioner's motion for summary decision was denied, and respondent's cross-motion was granted.

July 27, 2017

OAL DKT. NO. EDU 10995-16
AGENCY DKT. NO. 178-6/16

BOARD OF EDUCATION OF THE TOWNSHIP OF PISCATAWAY, MIDDLESEX COUNTY,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
NEW JERSEY DEPARTMENT OF EDUCATION, OFFICE OF SCHOOL FINANCE,	:	
RESPONDENT,	:	
AND	:	
HATIKVAH INTERNATIONAL ACADEMY CHARTER SCHOOL, INC., AND COLLEGE ACHIEVE CENTRAL CHARTER SCHOOL,	:	
RESPONDENTS-INTERVENORS	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by petitioner and respondent's and intervenors' replies thereto. In this matter, petitioner filed a verified petition for declaratory relief seeking the Commissioner's review of the provisions of *N.J.S.A.* 18:36A-12(b) in connection with *N.J.A.C.* 6A:23A-15.1-15.4, and a declaration that "the only 'non-resident district' financially responsible for students' attendance at a charter school are those included in the charter school's Department of Education-approved 'district of residence' or 'region of residence.'"[1] Petitioner submits that it is not designated as a "district of residence" or

[1] "District of residence" means "the school district in which a charter school facility is physically located; if a charter school is approved with a region of residence comprised of contiguous school districts, that region is the charter school's district of residence." *N.J.A.C.* 6A:11-1.2 and *N.J.A.C.* 6A:23A-15.1. Therefore, a "resident student" is "a student who resides in the area served by the district board of education that is the same as the district of residence of the charter school." *See N.J.A.C.* 6A:11-1.2 and *N.J.A.C.* 6A:23A-15.1. "Non-resident school district" is defined as "a school district outside the school district of residence of the charter school." *See N.J.A.C.* 6A:23A-15.1; *see also N.J.A.C.* 6A:11-1.2. A "non-resident student" is "a student from a non-resident district attending a charter school." *N.J.A.C.* 6A:11-1.2 and *N.J.A.C.* 6A:23A-15.1.

"region of residence," and therefore, it seeks relief from any obligation to fund these placements," and further seeks restoration of State aid previously directed to the charter school "on account of the Department's erroneous interpretation of the Act." Petitioner argues that *N.J.A.C.* 6A:23A-15.1-15.4 – which requires non-resident school districts to make payments to charter schools attended by its students – is "erroneous, and conflicts with the intent and purpose of the Act."[2] The crux of petitioner's argument is that the Act explicitly limits financial responsibility for students' attendance at charter schools to the "district of residence" – which petitioner argues is the district or region where the charter school is located – and the same rights and obligations do not exist for the students residing in districts where the charter school is not located; and therefore, *N.J.A.C.* 6A:23A-15.1-15.4 departs from the Act by requiring "non-resident" school districts to be financially responsible for their student's education in a charter school. In essence, petitioner challenges the Department's regulations implementing the Act.

The Department and the intervenors argue that the Act requires school districts to pay for their resident students to attend charter schools located in other districts, and therefore, the regulations implementing the Act are consistent with the Act's instruction. Respondent and intervenors also rely on the Legislative Fiscal Estimate issued in September 1995 – prior to the enactment of the Act – which provides that the cost of out-of-district students will be paid by the district of residence of the pupil, to further support their contention that the Act imposes financial responsibility on the district of residence of out-of-district pupils. Petitioner argues that reliance on the Fiscal Estimate is improper, because the school districts contemplated in the Fiscal Estimate were the districts that are "contiguous" to the district where the charter school is located. Petitioner further argues that the Fiscal Estimate was listed as "not available" when the Act was signed into law in December 1995, and there is no guarantee that it was considered by the Legislature.

The Administrative Law Judge (ALJ) found that the legislative history, including the Fiscal Estimate, the overall purpose of the Act, and the specific provisions of the Act, support the conclusion that a school district must pay for its residents to attend charter schools regardless of the location. The ALJ further found that through adoption of the subject regulations, the Department has implemented the Act by requiring

[2] "Act" refers to the Charter School Program Act of 1995. *N.J.S.A.* 18:36A-1 *et seq.*

non-resident districts to pay for their students to attend charter schools located in other districts. The ALJ concluded that the Board is obligated to provide funding for each of its residents enrolled in a charter school no matter where the charter school is located, and noted that if petitioner wished to challenge the validity of the Department's regulations, the proper venue is the Appellate Division.

The exceptions filed by the petitioner substantially recast and reiterate its arguments below. Petitioner argues that the ALJ erred in finding that if the Legislature intended the result advocated by petitioner – a school district is only obligated to pay for its residents to attend charter school if the school district is included in the charter school's district of residence – then it would have said so in clear and unambiguous language. Petitioner also argues that the ALJ erred by relying on the Fiscal Estimate as evidence of legislative intent. Petitioner notes that the ALJ erred in finding that the Legislature intended to give all students the right to attend a charter school anywhere in New Jersey at public expense, and also in finding that the Legislature intended to maintain the financial viability of charter schools that are unable to attract sufficient students from school districts in which they are located.

In its reply, the Department argues that petitioner's interpretation is incorrect based on the plain language of the Act and the legislative history. The Department submits that any ambiguity must be resolved through consideration of Legislative intent. The Department also argues that the ALJ properly relied on the Fiscal Estimate in this matter because there is no indication that the sponsor of the Bill objected to same. The Department contends that a student's enrollment in a charter school is not tied to whether the child's home district also has a need for such a charter school; rather, the charter school is "merely one of the options students have as 'part of this State's program of public education.'" The Department also notes that the ALJ was entitled to consider whether petitioner's proposed interpretation of the Act would impact the financial viability of charter schools. Intervenors have also responded to the exceptions, arguing that the ALJ's decision was supported by "an obvious interpretation of the [Act] and its legislative history," and have attached their previously submitted letter brief as reference for their position in this matter.

Upon consideration and review, the Commissioner is in accord with the ALJ's determination that, pursuant to the Act and the provisions set forth in *N.J.A.C.* 6A:23A-15.1-15.4, the petitioner is obligated to

provide funding for its students enrolled in charter schools located in other school districts.[3] Furthermore, while petitioner has framed its contentions as an issue with the Department's interpretation of the Act – which interpretation the Commissioner finds was proper – petitioner is, nevertheless, questioning the validity of the regulations. It is clear from the submissions that petitioner's true contention is with the Department's regulations, which set forth the specific requirements from which petitioner is seeking relief. Therefore, petitioner's disagreement with the regulations, and its challenges to the requirement imposed upon it, is properly addressed before the Appellate Division in accordance with *R.* 2:2-3(2).

Accordingly, the recommended decision of the ALJ is adopted as the final decision in this matter. Petitioner's motion for summary decision is denied and respondent's cross-motion is granted.

IT IS SO ORDERED.[4]

COMMISSIONER OF EDUCATION

Date of Decision: July 27, 2017
Date of Mailing: July 28, 2017

[3] The Initial Decision thoroughly addressed petitioner's contentions, and the ALJ's reasoning was clearly set forth therein; therefore, the Commissioner does not deem it necessary to repeat the ALJ's legal analysis in response to petitioner's exceptions and in adopting the Initial Decision.

[4] This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 10995-16

AGENCY DKT. NO. 178-6/16

BOARD OF EDUCATION OF THE TOWNSHIP OF PISCATAWAY, MIDDLESEX COUNTY,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF EDUCATION, OFFICE OF SCHOOL FINANCE,

Respondent.

David Rubin, Esq., for petitioner

Geoffrey N. Stark, Deputy Attorney General, for respondent (Christopher S. Porrino, Attorney General of the State of New Jersey, attorney)

Thomas O. Johnston, Esq., for intervenors Hatikvah International Academy Charter School and College Achieve Charter School (Johnston Law Firm)

Record Closed: May 12, 2017 Decided: June 14, 2017

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In accordance with N.J.S.A. 52:14B-8 and N.J.A.C. 6A:3-2.1, the Piscataway Township Board of Education (Piscataway) has petitioned the Commissioner of Education for a declaratory ruling with respect to Piscataway's responsibilities under N.J.S.A. 18A:36A-12(b), which is part of the Charter School Program Act of 1995 (the CSPA).

On July 25, 2016, the Commissioner transmitted the matter to the OAL for a hearing. The matter was assigned to the Hon. Imre Karaszegi. On August 17, 2016, a motion to intervene was filed by Hatikvah International Academy Charter School and College Achieve Central Charter School.

Following Judge Karaszegi's appointment to Superior Court, this matter was reassigned to the Hon. Joan Bedrin-Murray. On December 15, 2016, petitioner filed a motion for summary decision, and on February 14, 2017, respondent filed a cross-motion for summary decision. Thereafter, on March 16, 2017, Judge Bedrin-Murray recused herself from this matter, and it was assigned to the undersigned.

On March 27, 2017, a brief in opposition to petitioner's motion for summary decision was filed by intervenors[5] Hatikvah International Academy Charter School and College Achieve Central Charter School.

Piscataway's motion for summary decision seeks a determination that, under N.J.S.A. 18A:36A-12(b), "financial responsibility for charter school attendance is limited to school districts formally designated as the 'district of residence,' or within a 'region of residence,' in a charter school's approved charter." According to Piscataway, several students who reside in Piscataway attend charter schools located outside of Piscataway, and because Piscataway is not listed as the "district of residence" or "region of residence" for any of those charter schools, Piscataway is not required to pay for its residents to attend those charter schools.

Respondent's cross-motion seeks a determination that "the language and history of the [CSPA], and its implementing regulations, clearly demonstrate that

[5] It is not clear on what date the motion to intervene was granted.

resident districts are responsible for paying for their students to attend charter schools regardless of the charter school's location." The Department urges that, in light of the Legislature's intent to "expand opportunities for charter school enrollment" under the CSPA, "the term 'district of residence' as used in N.J.S.A. 18A:36A-12(b) refers to a student's district of residence," and not the school district in which the charter school is physically located.

LEGAL DISCUSSION

The CSPA provided for the establishment of a charter-school program as "a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom." N.J.S.A. 18A:36A-2. A charter school is "a public school operated under a charter granted by" the Commissioner of Education, but is "operated independently of a local board of education and is managed by a board of trustees." N.J.S.A. 18A:36A-3.

While charter schools operate independently from local boards of education, they are dependent upon local school boards for most of their funding. In particular, under the statutory provision for which Piscataway seeks a declaratory ruling, N.J.S.A. 18A:36A-12(b):

> [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 an amount equal to 90% of the sum of the budget year equalization aid per pupil and the prebudget year general fund tax levy per pupil inflated by the CPI rate most recent to the calculation. In addition, the school district of residence shall pay directly to the charter school the security categorical aid attributable to the student and a percentage of the district's special education categorical aid equal to the percentage of the district's special education students enrolled in the charter school and, if applicable, 100% of preschool education aid. The district of residence shall also pay directly to the charter school any federal funds attributable to the student.

The Legislature did not define the term "district of residence" in the CSPA, and the parties dispute the meaning of that term in the context of a school district's obligation to fund charter schools under N.J.S.A. 18A:36A-12(b).

Under principles of statutory interpretation, "[t]he Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citing Frugis v. Bracigliano, 177 N.J. 250, 280 (2003)). However, "if there is ambiguity in the statutory language that leads to more than one plausible interpretation, we may turn to extrinsic evidence, 'including legislative history, committee reports, and contemporaneous construction.'" Id. at 492–93 (quoting Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004)). Importantly, a reviewing body should "not view words and phrases in isolation but rather in their proper context and in relationship to other parts of a statute, so that meaning can be given to the whole of an enactment." State v. Rangel, 213 N.J. 500, 509 (2013) (citing Burnett v. Cnty. of Bergen, 198 N.J. 408, 424–25 (2009)).

Here, the meaning of "district of residence" under N.J.S.A. 18A:36A-12(b) is certainly ambiguous. A great deal of the ambiguity arises from the definition of "district of residence" in the CSPA's implementing regulations. Under the CSPA's implementing regulations, the State Board of Education defined "district of residence" as "the school district in which a charter school facility is physically located; if a charter school is approved with a region of residence comprised of contiguous school districts, that region is the charter school's district of residence." N.J.A.C. 6A:11-1.2; N.J.A.C. 6A:23A-15.1.

If the regulatory definition of "district of residence" is inserted into N.J.S.A. 18A:36A-12(b), then that provision would read "[the school district in which a charter school facility is physically located] shall pay directly to the charter school for each student enrolled in the charter school who resides in the district . . . ." Under such a reading, as urged by Piscataway, a school district would be obligated to pay for its residents to attend charter school only if the school district is included in the charter school's district of residence or region of residence.

However, the regulations specifically implementing N.J.S.A. 18A:36A-12(b)—N.J.A.C. 6A:23A-15.2 and N.J.A.C. 6A:23A-15.3—imbue the term "district of residence" as found in N.J.S.A. 18A:36A-12(b) with meaning beyond the literal regulatory definition. These regulations require both a "district of residence" and a

"non-resident district," which is defined as "a school district outside the school district of residence of the charter school," N.J.A.C. 6A:11-1.2 and N.J.A.C. 6A:23A-15.1, to "pay directly to a charter school the local share per pupil at the charter school rate, pursuant to N.J.S.A. 18A:36A-12.b" and to make the other payments required by N.J.S.A. 18:36A-12(b). N.J.A.C. 6A:23A-15.3(g)(2), (3). According to the Department, this makes sense because the term "district of residence" as used in N.J.S.A. 18A:36A-12(b) refers to the student's district of residence and thus has a different meaning from the regulatory definition of "district of residence."

Due to the ambiguity created by the regulatory scheme, it is necessary to both resort to extrinsic aids to ascertain the Legislature's intent regarding a school district's charter-school-funding obligations and look at the whole of the CSPA in order to give proper meaning to the term "district of residence" under N.J.S.A. 18A:36A-12(b). Doing so reveals that the State Board of Education, despite the confusion caused by its definition of "district of residence," properly implemented the funding requirements of N.J.S.A. 18A:36A-12(b) by obligating both a "district of residence" and a "non-resident district" to pay charter schools in order to effectuate the purpose of the CSPA.

First, the legislative history of the CSPA supports the conclusion that a school district must pay for its residents to attend charter schools regardless of the location of the charter schools. In particular, the Legislative Fiscal Estimate to S1796, which was combined with A592 to eventually become the CSPA, states both that "[t]he cost for out of district pupils would be paid by the district of residence of the pupil" and that "[i]f out of district pupils were admitted, the district of residence would pay the costs for that pupil." Legislative Fiscal Estimate to Senate, No. 1796 (September 14, 1995).

Indeed, "[a] Legislative Fiscal Estimate frequently is very useful in ascertaining legislative intent," especially when it is prepared prior to the enactment of a bill. Bd. of Chosen Freeholders v. State, 311 N.J. Super. 637 (Law Div. 1997), aff'd, 311 N.J. Super. 587 (App. Div.), aff'd, 159 N.J. 565 (1998). A Legislative Fiscal Estimate is prepared by the Office of Legislative Services (OLS) and "contain[s] the most accurate estimate possible, in dollars, concerning the amount by which expenditures or revenues will be increased or decreased for the State or any of its

political subdivisions" by a particular bill. N.J.S.A. 52:13B-7(b). The OLS "shall transmit an electronic copy of the . . . legislative fiscal estimate to the sponsor whose name first appears on the bill with a notice that the sponsor may object to the … legislative fiscal estimate within three business days after the transmittal of the electronic copy." N.J.S.A. 52:13B-10. If the OLS "has received no objections from the sponsor, [then the] legislative fiscal estimate [shall be] printed and promptly made available through the Office of Legislative Services to all members of the Legislature and to the general public." N.J.S.A. 52:13B-11.

The fiscal estimate for S1796 is dated September 14, 1995, and while S1796 was later amended to change a school-district-of-residence's funding obligation from 100 percent to the current 90 percent, the statutory language at issue was included in the original bill and was ultimately adopted by the Assembly on December 21, 1995, and by the Senate on January 4, 1996. The fiscal estimate prepared for S1796 is not the perfect extrinsic aid for discerning legislative intent with respect to N.J.S.A. 18A:36A-12(b), but there is no indication that the sponsor of S1796 objected to the OLS's statements regarding a district-of-residence's funding obligations for all of its residents who are enrolled in charter schools.

Also, as originally enacted, the third sentence of N.J.S.A. 18A:36A-12(b) read, "[t]he per pupil amount paid to the charter school shall not exceed the [program] budget per pupil for the specific grade level in the district in which the charter school is located." P.L. 1995, c. 426 (emphasis added). This suggests that the Legislature could have written "[t]he school district in which the charter school is located" instead of "[t]he school district of residence" in the first sentence of N.J.S.A. 18A:36A-12(b) if that is what the Legislature truly meant by "district of residence."

In light of the overall purpose of the CSPA, which declares that "[a] charter school shall be open to all students on a space available basis," an arrangement by which a school district's funding obligation is limited to its residents who attend a charter school in the "district of residence" or "region of residence" of the charter school could not be what the Legislature intended. N.J.S.A. 18A:36A-7. While "[p]reference for enrollment in a charter school shall be given to students who reside in the school district in which the charter school is located," "a charter school may

enroll non-resident students" if space is available.[6] N.J.S.A. 18A:36A-8. If a school district did not have to pay for all of its residents to attend charter schools, then charter schools would not truly be "open to all students." Instead, non-resident students presumably would only be able to attend charter schools if they could afford it themselves.[7]

This might threaten the financial viability of a charter school that is unable to fill its rolls with students who reside in the district in which the charter school is located. While charter schools may "[s]olicit and accept any gifts or grants for school purposes," N.J.S.A. 18A:36A-6(g), there is no guarantee that a charter school that could not attract sufficient numbers of resident students could make up the shortfall with gifts and grants. And, while the CSPA prohibits a charter school from charging tuition to a resident student, N.J.S.A. 18A:36A-8(a), but does not specifically prohibit a charter school from charging tuition to a non-resident student, it is highly unlikely that a charter school could fill a sufficient number of available spaces with non-resident students whose parents could afford to pay tuition.

By implementing N.J.S.A. 18A:36A-12(b) to require both "districts of residence" and "non-resident districts" to pay for their children to attend charter schools, the State Board of Education met its responsibility under N.J.S.A. 18A:36A-18 to effectuate the purpose of the CSPA, which is meant to establish a charter-school program as an alternative to traditional public schools for "all students on a space available basis." As the State Board of Education has explained,

> [t]he premise of the [CSPA] is that all students in New Jersey are entitled to free education provided by the school district in which they reside in accordance with N.J.S.A. 18A:38-1. This entitlement can be accomplished whether they choose to attend a public school of the

[6] As with the original second sentence of N.J.S.A. 18A:36A-12(b), the language used by the Legislature in N.J.S.A. 18A:36A-8(a)—"[p]reference for enrollment in a charter school shall be given to students who reside in the school district in which the charter school is located"—shows that the Legislature could have used this language instead of "district of residence" in the first sentence of N.J.S.A. 18A:36A-12(b) if it intended for the funding obligations to be limited to school districts in which the charter school is located.

[7] It is unclear from the papers submitted by Piscataway whether there are any charter schools that specifically include Piscataway as its "district of residence" or "region of residence." If there are indeed no charter schools for which Piscataway is the "district of residence" or "region of residence" then, under Piscataway's interpretation of N.J.S.A. 18A:36A-12(b), Piscataway's residents would be effectively shut out of the charter-school program unless their parents could afford to send them to an out-of-district charter school.

> district or a charter school as an independent public school.
>
> [29 N.J.R. 3492(a) (Aug. 4, 1997).]

Which district or region a charter school chooses for its residence is immaterial for determining a school district's funding obligation under N.J.S.A. 18A:36A-12(b); what triggers a school district's funding obligation is the mere fact that one of its residents is enrolled in a charter school, irrespective of location. Thus, the Department persuasively argues that the term "district of residence" as used in N.J.S.A. 18A:36A-12(b) is reasonably interpreted as the student's district of residence and not the charter school's district of residence.

Finally, the fact that a school district's transportation-funding obligations are different for resident and non-resident students under N.J.S.A. 18A:36A-13 and N.J.A.C. 6A:27-3.1 to -3.7 does not alter the way in which N.J.S.A. 18A:36A-12(b) should be read. The CSPA provides that "[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," but that "[n]on-resident students shall receive transportation services pursuant to regulations established by the State board."[8] N.J.S.A. 18A:36A-13.

Under those regulations, "[t]he expenditure for the transportation of charter . . . school students who reside outside of the school district or region of residence in which the charter . . . school is located is limited to the annual nonpublic school maximum statutorily established expenditure per student in accordance with N.J.S.A. 18A:39-1," and "[i]f the cost of transportation exceeds the maximum allowable expenditure, the student's parents or legal guardians may pay the amount in excess of the annual maximum or they shall be entitled to the maximum allowable expenditure as aid in lieu of transportation." N.J.A.C. 6A:27-3.1(e), -3.4. Thus, non-resident students of charter schools receive less favorable transportation treatment than resident students of charter schools, but this arrangement should be viewed as a reasonable tradeoff for a free education at a charter school of one's choice and not

[8] Again, the Legislature specifically used the language "the school district in which the charter school is located" in this provision.

as having any bearing on a logical interpretation of a school district's tuition obligations under N.J.S.A. 18A:36A-12(b).

Ultimately, the Legislature directed the State Board of Education to implement the provisions of the CSPA. Through its adoption of N.J.A.C. 6A:23A-15.2 and--15.3, the State Board of Education has implemented N.J.S.A. 18A:36A-12(b) by requiring both "districts of residence" and "non-resident districts" to pay for their children to attend charter schools. Here, Piscataway has asked for a declaratory ruling regarding the scope of its funding obligations under N.J.S.A. 18A:36A-12(b). The State Board of Education has made clear that Piscataway must, in accordance with N.J.S.A. 18A:36A-12(b), pay a charter school for each Piscataway resident who is enrolled in the charter school no matter where the charter school is located. If Piscataway wishes to challenge the validity of any of the State Board of Education's regulations, the proper venue for such a challenge would be the Appellate Division in accordance with R. 2:2-3(2).

CONCLUSION

Piscataway is obligated to provide funding in accordance with N.J.S.A. 18A:36A-12(b) for each of its residents who is enrolled in a charter school no matter where the charter school is located. As such, the Department's motion for summary decision is hereby **GRANTED** and Piscataway's motion for summary decision is **DENIED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 14, 2017
DATE

LESLIE Z. CELENTANO, ALJ

Date Received at Agency: June 14, 2017

Date Mailed to Parties: June 14, 2017

dr