204-22+

New Jersey Commissioner of Education

Final Decision

Board of Education of the City of Trenton,
Mercer County,

Petitioner,

v.

New Jersey Department of Children
and Families,

Respondent.

Synopsis

In October 2021, the Board of Education of the City of Trenton (Trenton) filed a petition contending that the respondent, the New Jersey Department of Children and Families (DCF), improperly required Trenton to make tuition payments for the educational costs of several children, including J.M., who were placed by DCF into educational programs at State facilities. DCF filed a motion to dismiss, arguing that student J.M. was not placed in his residential treatment facility by DCF and, further, that the facility in question is not a State facility; DCF contended, therefore, that Trenton is responsible for J.M.'s education and related costs.

The ALJ found, *inter alia,* that: J.M. and his parent resided in Trenton at the time of his placement at Legacy Treatment Services (LTS); J.M. is not a ward of the State and his parents and/or guardians were involved in and consented to his placement at LTS; the facility into which J.M. was placed was contracted by the State to provide such services; and the State determined that Trenton was the District of Residence (DOR) and therefore responsible for the educational costs of tuition and transportation for J.M. while he was a resident at LTS. The ALJ concluded that Trenton did not meet its burden to demonstrate that the determination of the DOR by the State was improper; accordingly, Trenton is responsible for the costs of J.M.'s education at LTS. The ALJ granted DCF's motion to dismiss the petition.

Upon a comprehensive review, the Commissioner disagreed with the ALJ that dismissal of the petition was appropriate at this juncture, as the Initial Decision, *inter alia*, failed to address any of the other students referenced in the case, despite the fact that the petition alleged that multiple students were placed by DCF in State facilities. Accordingly, the Commissioner reversed the Initial Decision granting DCF's motion to dismiss and remanded the matter to the OAL for further proceedings. In so doing, the Commissioner clarified, *inter alia*, that if J.M. or any of the other students was placed by DCF in a State facility, Trenton's financial responsibility is established by *N.J.S.A.* 18A:7F-24. Further, in the case of students placed by DCF in State facilities, the district of residence is not responsible for making direct tuition payments for the costs of the student's education; rather, the DOR's financial responsibility is limited to the reduction of its State aid.

204-22+
OAL Dkt. No. EDU 10036-21
Agency Dkt. No. 195-10/21

New Jersey Commissioner of Education

Final Decision

Board of Education of the City of Trenton, Mercer County,

Petitioner,

v.

New Jersey Department of Children and Families,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4 have been reviewed and considered.[1]

This matter involves the question of which party is responsible for providing the educational program and paying tuition and transportation costs for students in residential facilities. The Trenton Board of Education (Trenton) filed a petition of appeal, contending that the Department of Children and Families (DCF) improperly required Trenton to make tuition payments for the educational costs of several students.[2] According to Trenton, the students

[1] Respondent did not file a reply to petitioner's exceptions.

[2] In one paragraph, the petition identifies eight students by initials, while in another paragraph, it indicates that the dispute pertains to six students.

were placed by DCF in State facilities and, therefore, DCF must pay for their educational programs, rather than Trenton.[3]

DCF filed a motion to dismiss, arguing that student J.M. was not placed in his residential treatment facility by DCF, nor is the facility a State facility. DCF contends that the State is not J.M.'s legal guardian, and he is not in State custody. Therefore, according to DCF, Trenton is responsible for J.M.'s education and costs. Following transmittal and further briefing, the Administrative Law Judge (ALJ) concluded that Trenton is responsible for the costs of J.M.'s education because J.M. was unilaterally placed at Legacy Treatment Services (LTS) by his parents, and Trenton was the district where his parents resided as of the date of his placement.

In its exceptions, Trenton argues that the ALJ disregarded the fact that the petition involves multiple students, not just J.M. Trenton further notes that it has never disputed that Trenton is the district of residence for the students at issue and contends that the ALJ incorrectly analyzed the laws pertaining to a district of residence determination, even though the basis for the petition is a different portion of the statute, which the ALJ misinterpreted. According to Trenton, DCF's motion to dismiss for failure to state a claim did nothing to challenge the sufficiency of the allegations contained in the petition, and therefore dismissal was inappropriate. Trenton argues that DCF's motion was not supported by certification or affidavit by someone with personal knowledge and the ALJ improperly accepted statements made by DCF as fact without proof, when the facts as presented by DCF are disputed by Trenton.

[3] The petition and other filings acknowledge that *N.J.S.A.* 18A:7B-12 may require Trenton's State aid payments to be reduced, and that amount forwarded to DCF, in certain circumstances, as described below. However, Trenton contends that DCF has required Trenton to make tuition payments beyond the amounts required by *N.J.S.A.* 18A:7B-12, and for incorrect time periods.

Upon review, the Commissioner disagrees with the ALJ that dismissal is appropriate at this juncture. Most significantly, the Initial Decision fails to address any students other than J.M., despite the fact that the petition alleges that multiple students were placed by DCF in State facilities and are at issue in the dispute.[4]

Furthermore, even with regard to J.M., dismissal is inappropriate. In evaluating a motion to dismiss for failure to state a claim upon which relief can be granted, "the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." *Rieder v. State*, 221 *N.J. Super.* 547, 552 (App. Div. 1987) (internal quotation and citation omitted). The Commissioner must assume that the facts asserted by the petitioner are true. *Velantzas v. Colgate-Palmolive Co.*, 109 *N.J.* 189, 192 (1988). Here, the petition of appeal contends that J.M. was placed by DCF in a State facility. Pursuant to *N.J.S.A.* 18A:7B-2, if Trenton is correct in this contention, then Trenton is not responsible for making direct tuition payments for J.M.'s education; instead, Trenton's State aid payment would be reduced in the amount of DCF's per pupil cost. While DCF argues in its motion to dismiss that Trenton has produced no convincing evidence that LTS is operated by, contracted with, or otherwise specified by DCF, and therefore it is not a State facility, this argument applies the wrong standard. Trenton is not required to provide "convincing proof" to survive a motion

[4] The petition refers to various dates for the placements of the students – 2012, 2015, six years prior to the filing of the petition, and 2021. The Commissioner notes that *N.J.A.C.* 6A:3-1.3(i) requires a petition of appeal to be filed within 90 days from the date of receipt of notice of a final order, ruling, or other action that is the subject of the requested contested case hearing. Accordingly, some of the Board's claims may be time-barred. However, the ALJ's decision to dismiss the case does not indicate that the Board's claims regarding students other than J.M. were dismissed because they were time-barred. Rather, it appears that because DCF only presented arguments regarding J.M. in its motion to dismiss, the ALJ simply failed to address the Board's claims regarding any other students. The timeliness of Trenton's claims regarding other students depends on when Trenton received notice of DCF's actions, and the record is devoid of any facts addressing this issue. Accordingly, the Commissioner cannot reach any conclusions regarding timeliness and directs that this issue be addressed on remand if Trenton continues to pursue claims regarding earlier years.

to dismiss. The Commissioner instead must assume that the facts in the petition – namely, that J.M. was placed by DCF in a State facility – are true. This assumption is sufficient to support the conclusion that Trenton has stated a claim upon which relief can be granted and that dismissal is not warranted at this stage.

It appears that while citing to the standards for a motion to dismiss, the ALJ actually treated the motion as one for summary decision, because she relied on "facts" and documents presented by DCF that are outside the pleadings. According to *N.J. Ct. R.* 4:6-2, which is applicable to OAL proceedings pursuant to *N.J.A.C.* 1:1-1.3, when a motion to dismiss for failure to state a claim on which relief can be granted presents matters outside the pleading, such motion shall be treated as a motion for summary decision. A court should grant summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 528-29 (1995).

The Commissioner concludes that DCF's motion also fails to meet the standard necessary to grant a motion for summary decision. The ALJ's finding that J.M. was unilaterally placed at LTS by his parents is wholly unsupported by the record. DCF's motion includes no affidavits or certifications, and no testimony was taken in support of the motion.[5]

[5] The Commissioner notes that DCF argues that *N.J.S.A.* 30:4C-52 defines a "child placed outside his home" as "a child under the care, custody, or guardianship of the [Division of Child Protection and Permanency (DCP&P)]" who resides in certain places, including residential treatment facilities. According to DCF, it is undisputed that J.M. was not in the custody of DCP&P, nor was he a ward of the State, and therefore he cannot have been placed by DCF at LTS. Initially, it is not clear to the Commissioner that DCP&P must have custody or guardianship of the child for the child to be "placed" by DCF, as even the definition relied upon by DCF includes "a child under the care" of DCP&P as a child who can be "placed outside the home." Based on the current record, the Commissioner cannot determine whether a child to whom DCP&P provides services, without custody or guardianship, is a child "under

Furthermore, even if this "fact" as averred by DCF were accepted into the record, it is disputed by Trenton, creating a genuine issue of material fact that precludes summary decision. Further fact-finding is necessary to determine whether DCF placed J.M. at LTS, and whether LTS is a State facility.[6]

The ALJ also found that the Department of Education (DOE) determined that Trenton was responsible for J.M.'s costs, but there is no basis in the record to support that finding. DCF's motion refers to an email from the DOE's Mercer County Education Specialist, which allegedly stated that J.M.'s placement is not in a State facility and that Trenton is responsible for his costs. Although DCF's brief indicates that this email was included as an exhibit, it does not appear in the filing. Additionally, even if the Commissioner accepted that the email does exist and includes the statement alleged by DCF, the conclusion of the Education Specialist is not binding on the Commissioner.[7]

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the care" of DCP&P, such that he could be considered a child "placed" by DCF for purposes of applying *N.J.S.A.* 18A:7B-12. Indeed, the fact that the Legislature included "care" as a separate term from "custody" or "guardianship" suggests that "care" means something different and requires a different analysis. Trenton argues a parent cannot place a student at LTS and that only DCF, through the Children's System of Care (CSOC) and Care Management Organizations (CMOs), can make such a placement. At the stage of a motion to dismiss or motion for summary decision, the lack of clarity on the record regarding this issue is sufficient to preclude judgment in favor of DCF. Moreover, even accepting DCF's argument that custody or guardianship is required for a child to be placed by DCF, there is nothing in the record, apart from DCF's unverified arguments, to support the finding that J.M. is not in the custody or guardianship of DCP&P. Accordingly, dismissing the petition or granting summary decision to DCF is inappropriate at this stage.

[6] Fact-finding may require a review of the relationship between DCF, DCP&P, CSOC, the CMOs, and LTS, as well as the actions of each, and of J.M.'s parents, with regard to his placement. Similar fact-finding may also be necessary regarding the other students at issue in the petition, should Trenton's claims regarding those students proceed.

[7] The ALJ noted that the State's determination regarding a student's district of residence is entitled to a presumption of correctness. However, the issue in this case is not whether Trenton is J.M.'s district of residence, but rather whether J.M. was placed by DCF in a State facility, a determination not within the purview of the Education Specialist.

On remand, should the ALJ determine that J.M., or any of the other students, was placed by DCF in a State facility, Trenton's financial responsibility is established by *N.J.S.A.* 18A:7B-12. In the case of such a placement, the State aid payment made to the district of residence by the DOE is reduced by the per pupil cost calculated by the DOE pursuant to *N.J.S.A.* 18A:7F-24, and that amount is forwarded to DCF.[8] This reduction occurs only when the student is placed in the facility by the last school day prior to October 16 in the prebudget year. *N.J.S.A.* 18A:7B-12(a) ("No district shall be responsible for the tuition of any child admitted by the State to a State facility after the last school day prior to October 16 of the prebudget year."). The prebudget year is "the school fiscal year preceding the year in which the budget is implemented." *N.J.S.A.* 18A:7F-45. A sample timeline may be illustrative. The State aid payments made by the DOE in the fall of 2021 were for the budget year of 2021-2022. In this example, the prebudget year is 2020-2021. Accordingly, for any student placed by DCF in a State facility after October 15, 2020 (the last school day prior to October 16 of the prebudget year), there would be no reduction to the State aid payment made to the district for the 2021-2022 school year, and no increase to the State aid payment made to DCF for the 2021-2022 school year.[9] However, for any DCF-placed student who resided in a State facility on

[8] In the case of students placed by DCF in State facilities, the district of residence is not responsible for making direct tuition payments for the costs of the student's education. The district of residence's financial responsibility is limited to the reduction of its State aid.

[9] Accordingly, if J.M. was placed by DCF in a State facility when he was admitted to LTS in August 2021, Trenton's State aid payment for the 2021-2022 school year would not be reduced, nor would DCF's 2021-2022 payment be increased. The Initial Decision indicates that, even if J.M. was placed by DCF in a State facility, Trenton's State aid payment for 2021-2022 should be reduced, as the August 2021 admission was in advance of the October 16, 2021 reporting deadline. However, that statement is inconsistent with the statute, which clearly requires admission by October 16 of the prebudget year, not the budget year, for the district of residence's State aid payment to be reduced.

October 15, 2021, the State aid payment to the district for the 2022-2023 school year would be reduced, and that amount sent to DCF as part of its 2022-2023 State aid payment.[10]

Accordingly, the Initial Decision granting DCF's motion to dismiss is reversed. This matter is hereby remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 15, 2022
Date of Mailing: August 17, 2022

[10] It is not clear from the record whether J.M. remained admitted on October 15, 2021. If he was, and if DCF placed him at LTS and LTS is a State facility, Trenton's State aid payment for the 2022-2023 school year would be reduced by DCF's per pupil cost, and that amount forwarded to DCF for 2022-2023.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. EDU 10036-21
AGENCY DKT. NO. 195-10/21

CITY OF TRENTON
BOARD OF EDUCATION,
MERCER COUNTY,
Petitioner,
v.
NEW JERSEY DEPARTMENT OF
CHILDREN AND FAMILIES,
Respondent.

Elesia L. James, Esq., for petitioner (Legal Department, Trenton Board of Education, attorneys)

Christina Duclos, Deputy Attorney General, for respondent (Matthew J. Platkin, Acting Attorney General of New Jersey, attorney)

Record Closed: April 11, 2022 Decided: May 25, 2022

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Trenton Board of Education brings this action seeking a declaration that New Jersey Department of Children and Families is financially responsible for the education of J.M. who was placed in a residential placement/treatment facility. The petition was filed on October 15, 2022, and was transmitted to the Office of Administrative Law as a contested matter on December 9, 2021. N.J.S.A.52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The respondent filed a motion dismiss in lieu of an Answer on December 6, 2021. Opposition was filed by Trenton on January 14, 2022, and a reply was filed by DCF on February 14, 2022. There was an oral argument by the parties on April 6, 2022.

STATEMENT OF FACTS

Petitioner, Trenton Board of Education (Trenton) is a local education agency and is the District of Residence (DOR) for the child at issue in this matter. New Jersey Department of Children and Families (DCF) is a State agency that serves and supports at-risk children and families, and provides among others, mental health, behavioral health, and addiction services. Children's System of Care (CSOC) provides services to children and adolescents (along with their families) with emotional and behavioral challenges, those with developmental and intellectual disabilities, and those with substance use challenges. J.M. was placed in Legacy Treatment Facility (LTF), a facility, which is contracted by the State to provide such services. DCF was involved in the placement, in connection with the advice and consent of the parents. There has been no termination of the parental rights of J.M., and they remain residents of Trenton.

J.M., was admitted on August 13, 2021, to (LTS), a residential treatment facility located in Burlington County, New Jersey. In connection with this placement, J.M. was to attend the Burlington County Special Services School District in Lumberton, N.J. On or about September 2, 2021, CSOC sent a letter to Trenton notifying them of J.M.'s admission to LTS and requesting acknowledgment by the Board that it would be financially responsible for J.M.'s education and transportation costs while at LTS. Trenton declined to acknowledge their financial responsibility and claimed that it was DCF who was responsible for the educational/tuition and transportation costs for J.M.

because he was "State-placed" in a "State facility." DCF counters that under the plain language of the State Facilities Act, the DOR is responsible for the education and transportation of its students in such facilities. In addition, J.M. was unilaterally placed by his parent who is a resident of Trenton. J.M. is not now, nor has he ever been, a ward of the State.

The relevant FACTS in this matter are undisputed and that matter is ripe for disposition on a Motion to Dismiss.

The relevant facts are, and I **FIND** the following as FACT:

1. J.M. and his parent reside in the City of Trenton and were residents of Trenton at the time of the placement at LTS.

2. J.M. is not a ward of the State and his parents and/or guardians were involved in, and consented to his placement at LTS.

3. The facility that J.M. was placed in was contracted by the State to provide such services.

4. The State determined that Trenton was the DOR and as such, was responsible for the educational costs of tuition and transportation for J.M. while he was a resident at LTS.

LEGAL ANALYSIS AND CONCLUSION

In deciding a motion to dismiss for failure to state a claim upon which relief can be granted under R. 4:6-2(e), "the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." Rieder v. State, Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (emphasis added). The court may not consider anything beyond whether the complaint states a cognizable cause of action. Id. For purposes of determining the motion, the court must "assume the facts as asserted by [petitioners] are true and give [them] the benefit of all

inferences that may be drawn in [their] favor." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). If the complaint states no basis for relief and discovery would not supply one, dismissal is the appropriate remedy. Banco Popular N. Am. v. Gandi, 184 N.J. 161, 166 (2005). If the factual allegations are "palpably insufficient to support a claim upon which relief can be granted," the court must dismiss the complaint. Rieder. Moreover, it "runs against the grain of public policy to force a public entity to incur the cost of defending an action that ultimately and undoubtedly will be dismissed on the merits." Tryanowski v. Lodi Bd. of Educ., 274 N.J. Super. 265, 268-69 (Law Div. 1994) (emphasis added).

It is well settled that when children are placed residentially run by the State or contracted by the State, local school districts remain financially responsible for their educational services. The State Facilities Education Act (SFEA) of 1979, N.J.S.A. 18A:7B-2(a), provides as follows:

> For each State-placed child who is resident in a district and in a State facility on the last school day prior to October 16 of the prebudget year, . . . the Commissioner of Education shall deduct from the State aid payable to that district an amount equal to the approved per pupil cost established pursuant to the provisions of section 24 of P.L.1996, c.138 (C.18A:7F-24) . . . .

Regulations promulgated by the Commissioner further clarify which district retains fiscal responsibility for children such as J.M. These regulations recognize that a parent's residence may change, and, accordingly, N.J.A.C. 6A:23A-19.2 provides as follows:

> (a) The district of residence for school funding purposes shall be determined according to the following criteria:
>
> > 1. The "present district of residence" of a child in a residential state facility defined in N.J.S.A. 18A:7F-45 and referred to in the first paragraph of N.J.S.A. 18A:7B-12b means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.

> 2. The "present district of residence" of a child placed by a state agency in a group home, skill development home, approved private school for students with disabilities or out-of-state facility also referred to in the first paragraph of N.J.S.A. 18A:7B-12b means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's most recent placement by the state agency. In subsequent school years spent in the educational placement made by a state agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential state facility as set forth in (a)1 above.

The regulatory reference to the "last school day prior to October 16" is purposeful. Pursuant to N.J.S.A. 18A:7F-33, local school districts are required annually, "on or before October 20," to "file with the commissioner a report . . . containing all data necessary to effectuate the aid provisions of P.L. 2007, c. 260 (C. 18A:7F-43 et al.), which shall include . . . the number of pupils enrolled by grade . . . on the last school day prior to October 16." State aid is based, in part, on student enrollment figures. Hence, the regulations that implement the State Facilities Education Act seek to correlate the "district of residence" assignment of financial responsibility with an accurate determination of where a student is included, each academic year, for state aid reporting purposes.

When the State makes a determination as to who is responsible for the child's education and/or a determination about the "district of residency," it is entitled to a presumption of correctness. Bd. of Educ. of S. River v. Dep't of Educ., EDU 10117-98, Initial Decision (November 1, 2000) http://lawlibrary.rutgers.edu/oal/search.html. It is well established that when a local school board contests a DOR determination, the local board bears the burden of proving that the determination was in error. Bd. of Educ. of Bradley Beach v. Dep't of Educ., EDU 4975-99, Comm'r (July 3, 2000) http://lawlibrary.rutgers.edu/oal/search.html. In this case, there has been no termination of parental rights and the child's DOR is Trenton. The State determined that J.M. was a resident of Trenton when placed in the facility in question. Although this is not a residence dispute, the State is entitled to a presumption of correctness and the burden lies on the district challenging the determination, in this case the City of Trenton.

The determination that Trenton is financially responsible for J.M. was consistent with the applicable law and regulations. It is uncontroverted that on the date on which J.M. was placed residentially, his mother resided in Trenton. In accordance with N.J.S.A. 18A:7B-12(b) and N.J.A.C. 6A:23A-19.2, Trenton was responsible for J.M.'s educational costs because Trenton was the district where his mother resided "as of the date of [his] most recent placement by the state agency." N.J.A.C. 6A:23A-19.2(a)(2). The dispute about whether it is a State placement, or a State agency do not come into play in this situation. The child, who was not a ward of the State, and was a resident of Trenton at the time was placed in a State facility.

While N.J.S.A. 18A:38-1 governs the education of typical children, a separate statutory enactment, N.J.S.A. 18A:7B-1 et seq., specifically governs the education of children who have been placed residentially by State agencies. SFEA, and the regulations that interpret it, make it clear that for this latter group of children, a determination of residence is made only once annually. The plain language of N.J.S.A. 18A:7B-1 et seq. and N.J.A.C. 6A:23A-19.2 are clear. These enactments clearly and unequivocally set a point of time, the date of placement, as determinative for the initial residency determination, and go on to provide that the parent's domicile as of the last school day prior to October 16 will be determinative "[i]n subsequent school years." N.J.A.C. 6A:23A-19.2(a)(2).

Even assuming that J.M.'s admission to LTS can be construed as a State placement at a State facility, the law on which entity is financially responsible for his educational and transportation costs is clear. The relevant sections discussing the allocation of financial responsibility are found at N.J.S.A. 18A:7B-2 and -12 under the SFEA. N.J.S.A. 18A:7B-2 states that:

> [f]or each state-placed [and district-placed] child who is resident in a district and in a state facility on the last school day prior to October 16 of the prebudget year . . . the Commissioner of Education shall deduct from the state aid payable to that district an amount equal to the approved per pupil cost . . . . The amount deducted . . . shall be forwarded to the Department of Human Services or the Department of

> Children and Families, as applicable, if the facility is operated by or under contract with that department . . . . Amounts so deducted shall be used solely for the support of educational programs and shall be maintained in a separate account for that purpose. No district shall be responsible for the tuition of any child admitted by the State to a state facility after the last school day prior to October 16 of the prebudget year.

Trenton argues that this section provides that a student is placed by the State in a State facility prior to the last school day before October 16, the Commissioner of Education will deduct the amount of aid normally allocated to that student and distribute it to the facility where the student has been placed, and that the district will not be responsible for the tuition of the child. However, such a release of the district's financial responsibility is inconsistent both with the legislative history and the section discussing the criteria for determining the DOR when that child is not a ward of the State and the parents have been involved in the placement. Such an interpretation is also inconsistent with the purpose of the SFEA.

N.J.S.A. 18A:7B-12, States that for purposes of school funding, a child's DOR is determined based on a number of criteria, specifically:

> The district of residence for children who are in residential state facilities, or who have been placed by state agencies in group homes, skill development homes, private schools or out-of-state facilities, shall be the present district of residence of the parent or guardian with whom the child lived prior to [their] most recent admission to a state facility or most recent placement by a state agency.
>
> [Id. at (b).]

This section states the State will take financial responsibility only in specific scenarios. If the DOR cannot be determined according to the criteria contained herein, if the criteria contained herein identify a DOR outside of the State, or if the child has resided in a domestic violence shelter, homeless shelter, or transitional living facility located outside of the DOR for more than one year, the State shall assume fiscal responsibility for the tuition of the child. And "[i]f the State has assumed fiscal

responsibility for the tuition of a child in a private educational facility approved by the Department of Education to serve children who are classified as needing special education services." Id. at (e).

Looking to the legislative history of the SFEA, this act was created to ensure that all children in New Jersey were provided a thorough and efficient education. Sponsor's statements L. 1979, c. 207. The bill's sponsor noted that previously children in State institutions and facilities rarely received an adequate education due to a number of factors, including inadequate appropriations, insufficient emphasis on education within the facilities, a lack of uniform program standards, and ill-defined responsibilities for operating the classes. Ibid. The SFEA was to help ensure that children in such facilities were treated as much as possible like children in the public schools. "First, [the children] will be carried on the roles of the district, and their education will be supported by state aid and district taxes . . . [to] ensure a stable and sufficient source of funds." Ibid.

Both the sponsor's and committee's statements expressly stated that even prior to the SFEA the law held that school districts were required to pay tuition for children in State institutions, but the law was not enforced due to the financial burden the prior funding scheme would place on the school districts. Ibid. As the burden would primarily fall on districts that contained State institutions, rather than spreading the costs to all involved districts. Therefore, the SFEA simplified the guidelines for designating the DOR by tying the child's DOR to the residence of the parent(s) and/or guardian(s) with whom the child resided prior to their placement or admission, or the last known DOR of the child.

When looking to the original text of N.J.S.A. 18A:7B-12(d), the default DOR was the district where the child resided prior to their admission or placement, the district where the child was placed, or the district where the State facility was located. L. 1979, c. 207, § 18. However, when the SFEA was amended in 1985, it is clear that the Legislature considered assigning the financial responsibilities over such children to the State under additional circumstances. In that regard, the bill's language originally stated that the State would be financially responsible for a child's tuition when the DOR could

not be determined for children placed in a State facility or by a State agency. L. 1985, c. 244, § 1. However, amendments by the Assembly's Education Committee removed this addition and changed it to the DOR where the child resided prior to the admission or placement but added that if the DOR still could not be determined or if the DOR was outside of the State, only then would the State assume financial responsibility for the child's tuition. This amendment to the SFEA was proposed to rectify an unintended consequence where districts where State facilities and institutions were located were still paying the tuition costs for children when their normal DOR could not be determined. There is no dispute in this matter that the DOR is Trenton.

It is clear from the legislative history of the SFEA that the Legislature intended the various school districts to remain financially responsible for the children within their districts, or where the children would return after a placement or admission to a State facility for a period of time. The second is clear from the decision to connect the child's DOR to their parents' and/or guardians' present DOR, or the last DOR the child was at before their placement or admission. It also appears evident that the Legislature was concerned with overburdening school districts that contained State facilities and institutions. Finally, the instances where the State assumes financial responsibility are in cases where no district within the State would have, in the pre-budget year, claimed the child as enrolled or present in their district, and so the district would not have budgeted for the child. The Legislature has stated there are few instances where the State is financially responsible and indicates that it is only in these unusual circumstances that the State or its agencies would be responsible for the tuition, transportation, and educational costs of a child in a State facility. There are no unusual circumstances that exist here.

Finally, reading N.J.S.A. 18A:7B-2 in the context of the mandatory reporting deadline of October 20 by which school districts must report to the Commissioner the enrollment numbers for the allocation of state aid, N.J.S.A. 8A:7F-33, it seems far more logical for the exemption to a district's requirement to pay tuition for a child to occur only when a child is moved into a school district after the reporting deadline has passed. Thus, limiting the small time period when a school district may be unexpectedly required to pay for the educational and other costs of a child in a State-facility within the district.

But as this small exemption may cover at most a long weekend due to a State or school holiday, this also fits with the Legislature's intent of enforcing existing law requiring school districts to pay the cost for educating children in State facilities within the district's boundaries. See Bd. Of Educ. Of Piscataway Twp. V. N.J. Dept. of Educ., EDU 05063-10, Oct. 4, 2010 (initial decision), adopted Nov. 8, 2010, aff'd 2012 N.J. Super. Unpub. LEXIS 873 (App. Div. 2012); Bd. Of Educ. Of Boonton v. N.J. Dept. of Educ., EDU 12227-12, Feb. 24, 2014 (initial decision). As J.M. was admitted to LTS in August of 2021, with Trenton being aware of his admission on or about September 2, 2021—far before the October 16 deadline—this exemption would not apply regardless.

Accordingly, I **CONCLUDE** that the City of Trenton is the District of Residence for J.M. and as such, the financial responsibility for the education and transportation for J.M. is with the City of Trenton. I further **CONCLUDE** that the City of Trenton has not met its burden to demonstrate that the determination of the District of Residence by the State was improper.

ORDER

Based on the foregoing, it is hereby **ORDERED** as follows:

1. The Motion to Dismiss filed by DCF is **GRANTED.**

2. The Petition is **DISMISSED.**

3. It is further **ORDERED** that Trenton is the District of Residence and is liable the education and transportation of J.M. and others similarly situated in their district.

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, P.O. 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.

May 25, 2022
DATE

Sarah G. Crowley
SARAH G. CROWLEY, ALJ

Date Received at Agency: May 25, 2022

Date Mailed to Parties: May 25, 2022

SGC:sm