118-23

New Jersey Commissioner of Education
Final Decision

Board of Education of the Township of Piscataway,
Middlesex County,

Petitioner,

v.

Board of Education of the Borough of Bound Brook,
Somerset County,

Respondent.

Synopsis

The Board of Education of Piscataway (Piscataway) filed a petition contending that the Board of Education of Bound Brook (Bound Brook) is financially responsible for student O.W.'s attendance in Piscataway schools during the 2020–2021 school year. Bound Brook filed a motion for summary decision, asserting that Piscataway's petition was untimely filed. In this matter, O.W. was residing with his parent and attending school in Bound Brook in 2019, when he was removed by the New Jersey Department of Children and Families (DCF) and placed with his aunt, K.W., in Piscataway. O.W. continued to attend school in Bound Brook until the 2020-2021 school year, when his aunt enrolled him in school in Piscataway. During that year, Bound Brook ignored a tuition contract and invoices from Piscataway regarding O.W.'s educational costs. In December 2021 and January 2022, counsel for both boards exchanged a series of emails in which they continued to disagree about which board was responsible for O.W.'s tuition in 2020-2021. Piscataway filed the appeal in April 2022.

The ALJ found, *inter alia,* that: there are no material facts in dispute, and the matter is ripe for summary decision; because Bound Brook ignored Piscataway's tuition contract and invoices during the 2020-2021 school year, Piscataway should have realized that Bound Brook did not intend to pay for O.W.'s costs for that school year, yet the within petition of appeal was not filed until April 18, 2022; the 90-day limitations period in this case began to run at the end of the 2020-2021 school year, so any petition of appeal should have been filed by the end of September 2021; and Piscataway's argument that the matter of financial responsibility was still in dispute in the fall of 2021 and Bound Brook did not take final action until January 2022 is without merit. Accordingly, the ALJ determined that the petition was untimely pursuant to *N.J.A.C.* 6A:3-1.3 and granted Bound Brook's motion for summary decision.

Upon review, the Commissioner disagreed with the ALJ's findings and conclusion, and reversed the Initial Decision. In so doing, the Commissioner found, *inter alia*, that the petition was timely filed as, in other matters, the Commissioner has concluded that the 90-day limitations period begins to run when a petitioner is put on notice of a respondent's "firm position," which in this case did not occur until the exchange of emails in 2022. Further, the record demonstrates that Piscataway established a genuine issue of material fact; therefore, summary decision is inappropriate at this stage. Accordingly, the matter was remanded to the OAL for further proceedings consistent with this decision.

118-23
OAL Dkt. No. 03916-22
Agency Dkt. No. 82-4/22

New Jersey Commissioner of Education

Final Decision

Board of Education of the Township of Piscataway, Middlesex County,

Petitioner,

v.

Board of Education of the Borough of Bound Brook, Somerset County,

Respondent.

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

This matter involves the question of whether the Piscataway Board of Education (Piscataway) or the Bound Brook Board of Education (Bound Brook) is responsible for the costs of student O.W.'s attendance in a Piscataway school for the 2020-2021 school year. O.W. was residing with his parent and attending school in Bound Brook in May 2019, when he was removed by the New Jersey Department of Children and Families (DCF) and placed with his aunt, K.W., in Piscataway.[1] O.W. continued to attend school in Bound Brook until the 2020-2021 school year, when his aunt enrolled him in school in Piscataway. During that year,

[1] K.W.'s home was considered a resource family home pursuant to *N.J.S.A.* 30:4C-26.1.

Piscataway sent Bound Brook a tuition contract and periodic invoices, which Bound Brook ignored. In December 2021 and January 2022, counsel for both boards exchanged a series of emails regarding tuition, in which the parties continued to disagree about which board was responsible for O.W.'s costs.

In April 2022, Piscataway filed a petition of appeal, seeking an order that Bound Brook is financially responsible for the costs of O.W.'s attendance in Piscataway during the 2020-2021 school year. Following Bound Brook's motion to dismiss, which was converted to a motion for summary decision pursuant to *N.J.Ct.R.* 4:6-2,[2] the Administrative Law Judge (ALJ) determined that the petition was untimely pursuant to *N.J.A.C.* 6A:3-1.3. The ALJ found that Bound Brook ignored Piscataway's tuition contract and invoices during the 2020-2021 school year, such that Piscataway should have realized that Bound Brook did not intend to pay for O.W.'s costs. The ALJ concluded that, giving all favorable inferences to Piscataway, the 90-day limitations period began to run at the end of the 2020-2021 school year, and therefore any petition of appeal should have been filed by the end of September 2021; Piscataway did not file the petition of appeal until April 18, 2022. The ALJ rejected Piscataway's argument that the matter of financial responsibility was still in dispute in the fall of 2021 and that Bound Brook did not take final action until January 2022, finding that the facts suggest otherwise. Accordingly, the ALJ granted Piscataway's motion for summary decision and dismissed the petition.

In its exceptions, Piscataway argues that, in disputes between school districts arising from an ongoing course of dealing rather than a single discrete action, the Commissioner has framed the triggering event for the 90-day limitations period as when the parties are

[2] The Rules of Court are applicable to OAL proceedings pursuant to *N.J.A.C.* 1:1-1.3.

undeniably at an impasse. According to Piscataway, Bound Brook did not unequivocally refuse to pay for O.W.'s attendance until the exchange of emails between counsel in 2022, and any other events relied upon by the ALJ were insufficient to support a finding that the limitations period began to run earlier. Piscataway contends that it would be unfair to commence the limitations period on the last day of the school year when the regulation does not specify such a start date, and further submits that applying such strict timelines would discourage the informal resolution of these types of matters. Finally, Piscataway argues that, even if the petition was untimely, the limitations period should be relaxed because there was no clear notice to Piscataway that it had commenced running, and there would be no prejudice to Bound Brook.

In reply, Bound Brook argues that the ALJ correctly dismissed the petition as untimely based on the events that occurred during the 2020-2021 school year. According to Bound Brook, the emails between counsel in December 2021 and January 2022 should not reset the clock on the limitations period when Piscataway's counsel acknowledged that Bound Brook had already disagreed that it was responsible for O.W.'s tuition. Bound Brook contends that there is no reason to relax the 90-day limitations period and that doing so would run counter to the principles underlying the limitation.

Upon review, the Commissioner disagrees with the ALJ and finds that the petition of appeal was timely filed. In other matters, the Commissioner has concluded that the 90-day limitations period began to run when a petitioner was on notice of a respondent's "firm position." *Bd. of Educ. of the Twp. of Waterford, Camden Co. v. Bd. of Educ. of the Twp. of Hammonton, Atlantic Co.* and *Bd. Educ. of the Twp. of Folsom, Atlantic Co. v. Bd. of Educ. of the*

Twp. of Hammonton, Atlantic Co., Commissioner Decision No. 132-08 (decided Mar. 24, 2008); *see also Bd. of Educ. of the Borough of Mountainside, Union Co. v. Bd. of Educ. of the Twp. of Berkeley Heights, Union Co.*, Commissioner Decision No. 21-08 (decided January 17, 2008). While the ALJ relied heavily on the fact that Bound Brook ignored the tuition contract and invoices sent by Piscataway, the Commissioner concludes that Bound Brook's failure to respond is not sufficient to have notified Piscataway that Bound Brook was firm in its position that it was not responsible for O.W.'s tuition and costs, nor is the fact that the school year ended without any payment by Bound Brook. Neither of these non-events represents the communication of a firm position by Bound Brook to Piscataway.

Turning to the other potential triggering event asserted by Bound Brook, the enrollment of O.W. in Piscataway schools in September 2020 could not start the running of the limitations period since, at that time, Bound Brook had not stated its position regarding which party was financially responsible for O.W.'s education costs. Additionally, while Piscataway became aware in November 2020 that Bound Brook had not reported O.W. on its Application for State School Aid (ASSA), the certification of Piscataway's business administrator (BA) indicates that Bound Brook had not reported O.W. because Bound Brook believed that O.W.'s aunt had adopted him. Contrary to Bound Book's suggestion that the BA's certification confirms that Bound Brook had disavowed financial responsibility in November 2020, it is clear to the Commissioner that Piscataway was under the impression that Bound Book's disavowal was conditioned on factual misinformation that Piscataway later corrected. It was not unreasonable for Piscataway to believe that, once Bound Brook had received the updated

information showing that O.W.'s aunt had not adopted him and that the kinship legal guardianship had not yet been finalized, Bound Brook would begin making tuition payments.

The parties' briefs on summary decision, as well as their exceptions, also addressed the merits of Piscataway's claim for tuition. However, a review of the record demonstrates that Piscataway has established a genuine issue of material fact regarding DCF's involvement with O.W.'s placement, and therefore summary decision on this issue is inappropriate at this stage.

Accordingly, the Initial Decision is reversed and Bound Brook's motion for summary decision is denied. This matter is remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.[3]

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 20, 2023
Date of Mailing: April 21, 2023

[3] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 03916-22

AGENCY DKT. 82-4/22

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

v.

BOROUGH OF BOUND BROOK
BOARD OF EDUCATION,
SOMERSET COUNTY,
Respondent.

David B. Rubin, Esq., for petitioner

Kyle J. Trent, Esq., for respondent (Apruzzese, McDermott, Mastro & Murphy, attorneys)

Record Closed: December 9, 2022 Decided: January 31, 2023

BEFORE **SUSAN M. SCAROLA**, ALJ (Ret., on recall):

STATEMENT OF THE CASE

The petitioner, Township of Piscataway Board of Education, Middlesex County (Piscataway), contends that the respondent, Borough of Bound Brook Board of Education, Somerset County (Bound Brook), is financially responsible for student O.W.'s attendance at school in Piscataway during the 2020–2021 school year under N.J.S.A. 18A:7B-12(a)(2). That provision states that, for school funding purposes, if a child is placed in a resource family home, "the district of residence shall be the present district of residence of the parent or guardian with whom the child lived prior to the most recent placement in a resource family home."

Piscataway contends that, under N.J.S.A. 18A:7B-12(a)(2), Bound Brook was O.W.'s "district of residence" for the 2020–2021 school year because he lived with a parent in Bound Brook prior to his placement in a resource home in Piscataway in May 2019, and Bound Brook must pay to Piscataway the cost of O.W.'s education for the 2020–2021 school year. In response, Bound Brook has moved to dismiss the petition as untimely.

PROCEDURAL HISTORY

On April 18, 2022, Piscataway filed a petition of appeal with the Commissioner of Education.

In response, on May 6, 2022, Bound Brook filed a motion to dismiss in lieu of an answer pursuant to N.J.A.C. 6A:3-1.5(g). The Commissioner transmitted the matter to the Office of Administrative Law (OAL), where it was filed on May 17, 2022. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On September 28, 2022, Piscataway filed a brief in opposition to Bound Brook's motion to dismiss, and included with its brief a certification from David Oliveira, Piscataway's school business administrator/board secretary. By letter dated October 28, 2022, the parties were notified that, pursuant to R. 4:6-2, and as urged by Bound Brook, Bound Brook's motion to dismiss would be converted to a motion for summary decision,

because Oliveira's certification in response to Bound Brook's motion included facts outside Piscataway's petition.

On December 9, 2022, Piscataway submitted a brief in opposition to Bound Brook's motion for summary decision and included a supplemental certification from Oliveira and a certification from another Piscataway employee, Stephanie Verbarg.

FACTUAL DISCUSSION

For purposes of Bound Brook's motion, the following facts submitted by Piscataway are not in dispute. O.W. is a student who was residing with a parent and attending school in Bound Brook when, in May 2019, he was removed from his home and placed by the New Jersey Division of Child Protection & Permanency, Department of Children & Families (DCF), with his aunt, K.W., in a resource family home in Piscataway.[1] Petition, ¶¶ 1–2. O.W. continued to attend school in Bound Brook for the remainder of the 2018–2019 school year and for the 2019–2020 school year. Id. at ¶ 3. However, his aunt enrolled him in school in Piscataway for the 2020–2021 school year. Ibid. On or about June 29, 2021, O.W.'s aunt was granted kinship legal guardianship (KLG) over O.W. Id. at ¶ 4.

The Somerset County executive county superintendent has determined that Piscataway was responsible for O.W.'s education from the date of entry of the KLG order, but that determination did not address financial responsibility for O.W.'s enrollment in Piscataway during the 2020–2021 school year.[2] Id. at ¶ 5. On March 23, 2022, Piscataway applied to the Somerset County executive county superintendent for a determination that pursuant to N.J.S.A. 18A:7B-12(a)(2), Bound Brook was financially responsible for O.W.'s enrollment in Piscataway during the 2020–2021 school year; that

[1] Under the laws governing dependent and neglected children, "resource family home" is a "private residence[] wherein any child in the care, custody, or guardianship of the Department of Children and Families may be placed by the department[.]" N.J.S.A. 30:4C-26.1.

[2] It is unclear from the petition when the executive county superintendent made this determination; that is, it is unknown whether this determination was prior to or part of the determination made by the executive county superintendent in response to Piscataway's March 23, 2022, application. The facts concerning determinations made by the Somerset County Executive County Superintendent are recited here in the same order as they were presented by Piscataway in its petition.

application has since been transferred to the Middlesex County executive county superintendent of schools, where it is currently pending resolution. Id. at ¶ 6.

In an April 14, 2022, response to Piscataway's application, Bound Brook asserted that executive county superintendents of school have no jurisdiction to resolve disputes over financial responsibility for the education of students residing in resource family homes, and that such disputes must be resolved, in the first instance, by the Office of School Facilities and Finance on application pursuant to N.J.A.C. 6A:23A-19.2. Id. at ¶ 7. Piscataway disputes Bound Brook's contention regarding jurisdiction and, on April 18, 2022, appealed to the Commissioner's authority over all disputes arising under the school laws for a determination that Bound Brook is responsible for the costs of O.W.'s attendance at school in Piscataway during the 2020–2021 school year. Id. at ¶ 9.

In response, on May 6, 2022, Bound Brook filed a motion to dismiss in lieu of an answer pursuant to N.J.A.C. 6A:3-1.5(g). According to Bound Brook, even assuming that all of the allegations set forth in Piscataway's petition are true, the matter must be dismissed as untimely under N.J.A.C. 6A:3-1.3(i). The 90-day rule, as N.J.A.C. 6A:3-1.3(i) is commonly known, requires a party to "file a petition 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, that is the subject of the requested contested case hearing." Bound Brook contends that Piscataway should have first filed a complaint with the Office of School Facilities and Finance in accordance with the residency-determination rules at N.J.A.C. 6A:23A-19.1 to -19.3, and that Piscataway filed this petition before the Commissioner on April 18, 2022, in contravention of the 90-day rule because it was filed approximately 594 days after O.W.'s aunt enrolled him in Piscataway.

On September 28, 2022, Piscataway filed a brief in opposition to Bound Brook's motion to dismiss, and included with its brief a certification from David Oliveira, Piscataway's school business administrator/board secretary. Oliveira certified to the following supplemental facts not contained in Piscataway's petition: When, in September 2020, K.W. enrolled O.W. in Piscataway for the 2020–2021 school year, she provided Piscataway with certain paperwork, including a letter from the DCF advising O.W.'s

school principal in Bound Brook that O.W. had been removed from his parental home and placed in a resource family home with K.W. as of May 20, 2019, and that O.W. "will remain in his or her current school—Bound Brook Borough." Oliveira Cert., ¶¶ 2–3. The undated letter bears a fax date stamp of September 11, 2019. Id. at ¶ 3. K.W. also presented a letter from the DCF dated May 21, 2019, authorizing her to register O.W. for school. Id. at ¶ 4.

In October 2020, Piscataway's 2020–2021 electronic Application for State School Aid (ASSA) included O.W. as being the financial responsibility of Bound Brook; however, Piscataway received an error message because Bound Brook's ASSA had not included O.W. as being Bound Brook's responsibility. Id. at ¶ 5. In November or December 2020, Piscataway contacted Bound Brook, which according to Oliveira thought that K.W., a Piscataway resident, had custody of O.W. and that, as such, Piscataway was financially responsible for him for the 2020–2021 school year. Id. at ¶ 6.

Piscataway spoke with K.W., who informed the district that she was seeking KLG status, and that the process was ongoing. Ibid. On December 2, 2020, Piscataway, in turn, informed Bound Brook of the ongoing guardianship process. Ibid. In particular, an accountant for Piscataway sent an email to Bound Brook about the guardianship situation and stated that "[b]ased on this information, as of 10/15/20 [O.W.] is still being sent from Bound Brook, until this process is finalized. Can you adjust your ASSA to reflect Bound Brook sending [O.W.] to Piscataway." Id. at Ex. C. The accountant then advised Bound Brook that "[a]s soon as the court order has finalized the [guardianship] paperwork, we will notify you of the change." Ibid. According to Oliveira, he "alerted the Department [of Education's] Middlesex County Office to the issue in December 2020, in the hope they could straighten it out informally, but that never happened." Id. at ¶ 6.

Oliveira further certified that "[o]ver the course of the 2020–2021 school year, my office sent Bound Brook a tuition contract and periodic invoices for tuition for O.W., which were ignored." Id. at ¶ 7.

However, "[t]he matter remained in limbo between our two districts going into the fall of 2021," when on November 15, 2021, Piscataway contacted the DCF for information

about O.W.'s district of residence. Ibid.; Ex. D. In response, on November 19, 2021, the DCF provided Piscataway with a court order appointing K.W. as O.W.'s KLG on June 29, 2021. Ibid.

Beginning on December 18, 2021, Piscataway's counsel, David Rubin, and Bound Brook's then-counsel, Robert Merryman, exchanged a series of emails about O.W.'s district of residence for the 2020–2021 school year. In the first email, Rubin stated that Bound Brook was responsible and acknowledged that "Bound Brook has indicated it disagrees" and that "my understanding is that this disagreement goes back to last school year." Id. at Ex. E.

On December 22, 2021, Rubin informed Merryman that he reviewed the KLG order and that he accepted Piscataway's responsibility for O.W. after the order was entered, but not for the 2020–2021 school year, and asked Merryman if "Bound Brook is still contesting its financial responsibility for that period of time?" Ibid. Merryman eventually responded on January 27, 2022, advising Rubin that because it was unknown where O.W.'s parent lived when he was removed from the home, "Bound Brook District is not prepared to accept financial responsibility for the child's education in Piscataway for 2020–21." Ibid.

On March 22, 2022, Rubin reached out to the DCF about where O.W.'s parent(s) lived during the 2020–2021 school year, and a DCF representative informed him that O.W.'s mother had lived in Bound Brook throughout the DCF's involvement and was still living in that town when the DCF closed its file on O.W. in July 2021. Id. at Ex. F.

Based on these facts, Piscataway argues in opposition to Bound Brook's motion that the 90-day rule does not bar its petition and that Bound Brook was financially responsible for O.W.'s attendance at school in Piscataway for the 2020–2021 school year pursuant to N.J.S.A. 18A:7B-12(a)(2) since Bound Brook was O.W.'s "district of residence" for the 2020–2021 school year.

As to the timeliness issue, Piscataway maintains that, although Piscataway first approached Bound Brook in December 2020 about financial responsibility for O.W.'s

education, and although "there were further communications between the parties from time to time over the rest of [the 2020–2021] school year, . . . [t]he earliest evidence of a 'final . . . action'" for purposes of N.J.A.C. 6A:3-1.3(i) "was the exchange of emails between the parties' counsel in December 2021 and January 2022, after Piscataway was first made aware in November 2021 that the aunt had secured [KLG] status in June 2021."

According to Piscataway, the limitations period most reasonably started to run after Merryman's January 27, 2022, email in which he stated that Bound Brook "is not prepared to accept financial responsibility for [O.W.'s] education in Piscataway for 2020–2021." And because Piscataway filed its petition on April 18, 2022, such filing was timely, that is, within ninety days of "final action" by Bound Brook regarding financial responsibility for O.W. for the 2020–2021 school year.

Moreover, Piscataway contends that, contrary to Bound Brook's position, it did not have to first appeal to the Office of School Facilities and Finance pursuant to N.J.A.C. 6A:23A-19.2 because that provision does not, on its face, refer to disputes regarding the district of residence of a child living in a resource family home, such as O.W.

Finally, Piscataway argues that, even if its petition was untimely, the 90-day rule should be relaxed for good cause because "[t]here is no evidence that Bound Brook was ever lulled into believing that Piscataway had dropped its pursuit of tuition for the 2020–2021 school year," and "[g]iven the confusion over the aunt's guardianship status during that school year, it's apparent that the material facts bearing on Bound Brook's responsibility were continuing to evolve well after O.W. started attending school in Piscataway in September 2020." In Piscataway's view, "there is no prejudice to Bound Brook by allowing Piscataway its day in court."

On October 11, 2022, Bound Brook submitted a brief, arguing that, because Piscataway, through Oliveira's certification, provided facts outside the petition, Bound Brook's motion to dismiss should be converted to a motion for summary decision and that the additional facts, which Bound Brook does not dispute, not only strengthen Bound Brook's 90-day-rule argument, but also show that Piscataway was financially responsible for O.W. for the 2020–2021 school year.

In regard to the latter argument, Bound Brook relies on N.J.S.A. 30:4C-26b, which authorizes the DCF to determine the school a child should attend while placed in a resource family home. According to Bound Brook, under that statute, only the DCF (or a court) could have changed O.W.'s school placement from Bound Brook to Piscataway, and by accepting O.W. in the absence of the DCF or a court order placing O.W. in Piscataway's schools for the 2020–2021 school year, Piscataway "assume[d] responsibility for the cost of same, and cannot enroll a student in direct contravention to the law and then seek to impose the cost on another school district despite its disregard for the law to the financial detriment of the other school district."

By letter dated October 28, 2022, the parties were advised that, pursuant to R. 4:6-2, and as argued by Bound Brook, Bound Brook's motion to dismiss would be converted to a motion for summary decision, because Oliveira's certification in response to Bound Brook's motion included facts outside Piscataway's petition. Under this rule, if, on a motion to dismiss for failure to state a claim upon which relief may be granted (like Bound Brook's motion to dismiss on timeliness grounds),

> matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable notice of the court's intention to treat the motion as one for summary judgment and a reasonable opportunity to present all material pertinent to such a motion.
>
> [R. 4:6-2; see also Roa v. Roa, 200 N.J. 555, 562 (2010) (concluding that because a motion to dismiss a complaint as untimely "was based upon evidence, including certifications, outside of the pleadings," the Court "view[ed] the record in a light most favorable to the non-moving party, which is the standard applicable to summary judgment").]

In accordance with that rule, Piscataway was given an opportunity to oppose Bound Brook's motion for summary decision.

On December 9, 2022, Piscataway submitted a brief in opposition to Bound Brook's motion for summary decision and included a supplemental certification from Oliveira and a certification from another Piscataway employee, Stephanie Verbarg. In its brief, Piscataway again argued against the application of the 90-day rule, reiterating that "Piscataway would not have reasonably considered this matter as having reached an impasse until after the email exchanges between [counsel for each district] clearly framing the issues and our clients' positions concerning them."

As for the substantive issue—which district is financially responsible for O.W.'s schooling during the 2020–2021 school year—Piscataway again contends that N.J.S.A. 18A:7B-12(a)(2) applies, such that Bound Brook is responsible for O.W.'s tuition because Bound Brook was where O.W.'s mother lived when the DCF placed O.W. in a resource family home in Piscataway. And as for Bound Brook's contention that, under N.J.S.A. 30:4C-26b, only the DCF could change O.W.'s placement from Bound Brook to Piscataway, and that in the absence of such action by the DCF Piscataway "assume[d] responsibility for the cost of same, and cannot enroll a student in direct contravention to the law and then seek to impose the cost on another school district despite its disregard for the law to the financial detriment of the other school district," Piscataway counters with Verbarg's certification, in which she attests that O.W.'s aunt informed Verbarg that the DCF did, in fact, direct the aunt to change O.W.'s enrollment from Bound Brook to Piscataway for the 2020–2021 school year. Regardless, according to Piscataway, N.J.S.A. 18A:7B-12(a)(2), which cross-references N.J.S.A. 30:4C-26b, dispositively designates Bound Brook as the district of residence for funding purposes for O.W. during the 2020–2021 school year.

LEGAL ANALYSIS

Standards for summary decision

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Such motion "shall be served with briefs and with or without supporting affidavits" and "[t]he decision sought may be rendered if the papers

and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). When the motion "is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid.

Bound Brook does not dispute any of the facts presented by Piscataway. As such, the question is whether Bound Brook, as the moving party, is entitled to prevail as a matter of law. This first depends on the threshold issue regarding the timeliness of Piscataway's petition.

The 90-day rule

Under the "rules of procedure for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws," N.J.A.C. 6A:3-1.1 to -1.17, "[t]he petitioner shall file a petition 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, that is the subject of the requested contested case hearing." N.J.A.C. 6A:3-1.3(i).

Here, Bound Brook asserts that Piscataway's petition is untimely under the 90-day rule, and, therefore, should be dismissed. As the Supreme Court has explained, the 90-day rule serves the dual purposes of (1) "stimulat[ing] litigants to pursue a right of action within a reasonable time so that the opposing party may have a fair opportunity to defend, thus preventing the litigation of stale claims," and (2) "penaliz[ing] dilatoriness and serv[ing] as a measure of repose by giving security and stability to human affairs." Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572, 587 (1993) (citations and quotations omitted). Importantly, for purposes of N.J.A.C. 6A:3-1.3(i), the limitations period begins when a party is "alerted to the existence of facts that may equate in law with . . . a cause of action." Ibid. (citing Burd v. New Jersey Tel. Co., 76 N.J. 284, 291 (1978)).

The 90-day rule may be "relaxed or dispensed with . . . in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice," or if there is "the presence of a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves." N.J.A.C. 6A:3-1.16; Balwierczak v. Bd. of Educ. of Berkeley Heights, 1999 N.J. AGEN LEXIS 1367 (December 8, 1999).

Timeliness of Piscataway's petition

Piscataway's petition should be dismissed as untimely because the board was alerted to the existence of facts that equated with a cause of action during the 2020–2021 school year yet did not file its petition seeking tuition from Bound Brook for O.W.'s school attendance in Piscataway for the 2020–2021 school year until April 18, 2022. While it is difficult to pinpoint the applicable limitations period in this matter, several instances of inaction by Bound Brook in response to actions by Piscataway throughout the 2020–2021 school year should have indicated to Piscataway that Bound Brook did not intend to pay for O.W. and stimulated Piscataway to file a petition at some point during the 2020–2021 school year, or at some point soon thereafter.

The first indication of Bound Brook's renunciation of responsibility for the costs of O.W.'s education in Piscataway was the fact that Bound Brook did not include O.W. as a student sent to Piscataway in its 2020–2021 ASSA filing. And after Piscataway alerted Bound Brook about K.W.'s ongoing, yet unfinalized, pursuit of guardianship of O.W., stating in the December 2, 2020, email that "[b]ased on this information, as of 10/15/20 [O.W.] is still being sent from Bound Brook, until this process is finalized. Can you adjust your ASSA to reflect Bound Brook sending [O.W.] to Piscataway," it appears that Piscataway's request went unanswered by Bound Brook. This was yet another indication that Bound Brook was disinclined to pay for O.W.'s education in Piscataway.

However, the most obvious indication of Bound Brook's position and what should have served as the impetus for Piscataway to promptly file a petition against Bound Brook was the fact that "[o]ver the course of the 2020–2021 school year, [Piscataway] sent Bound Brook a tuition contract and periodic invoices for tuition for O.W., which were

ignored." At some point during the 2020–2021 school, after Bound Brook's silence or inaction in response to Piscataway's attempts at getting Bound Brook to pay tuition for O.W., Piscataway should have realized that Bound Brook did not intend to pay for O.W. and should have pursued legal action against Bound Brook.

The exact date by which Piscataway should have filed a petition is uncertain, particularly because Oliveira did not certify to or clarify the dates on which Piscataway sent the tuition contract or invoices to Bound Brook. However, even giving all favorable inferences to Piscataway, and setting the start date for the 90-day period at the last day of the 2020–2021 school year, or June 30, 2021, Piscataway would have had to file its petition by the end of September 2021. That did not happen. And although Piscataway advised Bound Brook on December 2, 2020, that "[a]s soon as the court order has finalized the [guardianship] paperwork, we will notify you of the change," Piscataway waited until November 2021 to inquire with the DCF about K.W.'s guardianship status (which was finalized on June 29, 2021), and then revisited with Bound Brook the issue of financial responsibility for the 2020–2021 school year.

Although Piscataway argues that "[t]he matter [of financial responsibility] remained in limbo between the two districts going into the fall of 2021," and that Bound Brook did not take "final action" until January 2022, the facts suggest otherwise. Collectively, Bound Brook's 2020–2021 ASSA filing, Bound Brook's inaction in amending its ASSA filing after Piscataway asked Bound Brook to do so in the December 2, 2020, email, and Bound Brook's inaction when sent a tuition contract and numerous invoices during the 2020–2021 school year alerted Piscataway that Bound Brook was not going to pay O.W.'s tuition for the 2020–2021 school year and should have spurred Piscataway to file a petition against Bound Brook at some point during the 2020–2021 school year, or ninety days thereafter.[3] April 18, 2022—by any measure—was too late.[4]

[3] In this regard, such petition could have been filed at any point with the Commissioner, who has jurisdiction over all matters arising under the school laws. N.J.S.A. 18A:6-9.

[4] That Piscataway first sought redress through an executive county superintendent also does not save Piscataway from the 90-day rule, since Piscataway appealed to that authority only a few weeks before filing a petition with the Commissioner.

Piscataway unconvincingly argues that, in a dispute between school districts, the 90-day period does not begin to run until there is a "firm" disagreement or an "undeniable impasse," citing to Commissioner decisions in Bd. of Educ. of Mountainside v. Bd. of Educ. of Berkeley Heights, 2008 N.J. AGEN LEXIS 270 (January 17, 2008), aff'd, 2010 N.J. Super. Unpub. LEXIS 545 (March 15, 2010), and Bd. of Educ. of Waterford v. Bd. of Educ. of Hammonton, 2008 N.J. AGEN LEXIS 261 (March 24, 2008), and that Piscataway and Bound Brook were not undeniably at an impasse until January 2022. Bound Brook's inaction in the face of Piscataway's persistent attempts to get Bound Brook to accept financial responsibility for O.W. throughout the 2020–2021 school year suggests otherwise. Piscataway was certainly firm in its position by sending a tuition contract and invoices to Bound Brook that it wanted Bound Brook to be responsible for O.W., yet it declined or neglected to pursue legal action within a reasonable time after its communications went unanswered.

Finally, relaxation of the 90-day rule is not appropriate in this case because Piscataway knew it had a cause of action at some point during or shortly after the 2020–2021 school year but sat on its rights, and because there is no "substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves." While not to minimize the importance of a district of residence's orderly payment of tuition for a student's attendance in another school district when required by law, the present dispute is between two school districts over the costs of educating one child for one school year.

Contrary to Piscataway's argument that relaxation is appropriate because "[t]here is no evidence that Bound Brook was ever lulled into believing that Piscataway had dropped its pursuit of tuition for the 2020–2021 school year," Bound Brook could have reasonably concluded that Piscataway would not seek legal recourse when, after ignoring the tuition contract and invoices throughout the 2020–2021 school year, Bound Brook did not hear anything about the tuition issue again until December 2021. Accordingly, Bound Brook's motion to dismiss Piscataway's petition as untimely should be granted.

CONCLUSION

Based on the uncontested facts presented by both districts, Bound Brook's motion to dismiss Piscataway's petition as untimely is granted.

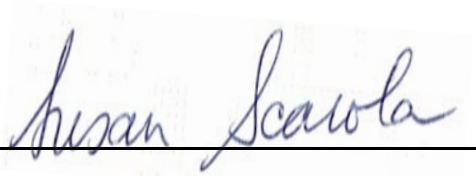
ORDER

I hereby **ORDER** that Bound Brook's motion for summary decision is **GRANTED**. Piscataway's petition shall be **DISMISSED** as untimely filed.

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.



January 31, 2023
DATE

SUSAN M. SCAROLA, ALJ (Ret., on recall)

Date Received at Agency: _____

Date Mailed to Parties: _____

SMS/nn

APPENDIX

WITNESSES

For petitioner:

None

For respondent:

None

EXHIBITS

For petitioner:

Briefs

For respondent:

Brief