

New Jersey Commissioner of Education
Final Decision

Monmouth-Ocean Commission, Petitioner, v. Board of Education of the Township of Hillside, Union County, Respondent.	Educational Services
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that respondent Board of Education of the Township of Hillside is responsible for student J.W.'s transportation costs for the 2017-2018 and 2018-2019 school years in the amount of \$44,195.59.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby granted.

IT IS SO ORDERED.¹


COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2025
Date of Mailing: October 20, 2025

¹ 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 08311-24

AGENCY DKT. NO. 113-04/24

**MONMOUTH-OCEAN EDUCATIONAL
SERVICES COMMISSION,**

Petitioner,

v.

**TOWNSHIP OF HILLSIDE BOARD OF
EDUCATION, UNION COUNTY,**

Respondent.

Eltia I. Galarza, Esq. for petitioner (Taylor Law Group, LLC, attorneys)

Noelle van Barren, Esq. for respondents (Hunt, Hamlin and Ridley, attorneys)

Record Closed: January 7, 2025

Decided: August 7, 2025

BEFORE **WILLIAM J. COURTNEY**, ALJ:

PROCEEDURAL HISTORY

On April 24, 2024, Petitioner Monmouth-Ocean Educational Services Commission (MOESC) filed a petition with the New Jersey Commissioner of Education seeking and order compelling respondent Township of Hillside Board of Education ("Hillside") to pay

petitioner \$44,195.59 for transportation services rendered to a disabled minor student who originally resided in Hillside, New Jersey. On June 12, 2024, Hillside filed an Answer to the Petition and on June 14, 2024 the matter was referred to The Office of Administrative Law for resolution. On September 6, 2024, respondent Hillside filed a Motion for Summary Decision based on MOESC's alleged failure to join the Manchester Township Board of Education as a necessary party. On December 3, 2024, MOESC filed its opposition to the Motion for Summary Decision and the record was closed on January 7, 2025 after receiving Hillside's Reply.

FINDINGS OF FACT

I **FIND** the following as **FACT**:

1. J.W. is a special education student who originally resided in Hillside, New Jersey.
2. During the 2017-18 and 2018-19 school terms J.W. was placed into a residential treatment facility (Archertown Meadows Respite Home "AMRH") located in New Egypt, NJ.
3. During the 2017-18 and 2018-19 school terms J.W. attended Regional Day School ("RDS"), a choice school located in Manchester Township, NJ.
4. MOESC is a public educational agency, established under New Jersey Statute 18A, that assists public and non-public schools in numerous areas including cooperative transportation.
5. During the 2017-18 and 2018-19 school terms MOESC provided transportation services for J.W. to and from AMRH and seeks recovery from Hillside in the amount of \$44,195.59 for transporting J.W. too and from AMRH and RDS.
6. MOESC seeks recovery from Hillside in the amount of \$44,195.59 for transporting J.W. to and from AMRH.
7. On July 19, 2019, the New Jersey Department of Education found that Hillside was J.W.'s district of residence.

8. The parties do not dispute that The New Jersey Department of Education has determined that Hillside is J.W.'s resident district.

LEGAL ANALYSIS

In its motion for summary decision, Hillside maintains that it is not liable for J.W.'s transportation cost and that MOESC'S petition must be dismissed because they failed to join Manchester Township as a party. They claim that Manchester Township is the entity responsible for J.W.'s transportation costs and thus a necessary party to this action. I disagree.

In support of its Motion, Hillside relies upon language contained in the current version of N.J.A.C. 6A:27-5.1, which limits the exposure of the resident district board of education (in this case, Hillside) for transportation costs to the maximum per student expenditure for non-public school transportation. That language, however, was not contained in the version of the regulation in place at the time the transportation costs at issue were incurred.

It was not until June 3, 2020, an entire year after the last transportation costs were incurred that the New Jersey Board of Education ("BOE") held a public meeting on the proposed readoption, with amendments, of regulations "pertaining to the transportation of students." In re N.J.A.C. 6A:27-5.1(b); See also 2023 N.J. Super Unpub. LEXIS 1110 at *2 (App. Div. July 3, 2023). The proposed amendment adding subsections 5.1(b)(1) and (b)(2) were meant to "[d]efine the maximum expenditure of the resident district board of education for the transportation of eligible charter school students with disabilities who reside outside the school district in which the charter school is located and eligible choice program students with disabilities." Id. at *3. Those are the amendments establishing that the expenditure of the resident district shall not exceed the maximum allowable expenditure per student set out in N.J.S.A. 18A:39-1, and if so, shall be covered by the choice school district. Id. at *3-4. On September 21, 2020, the proposed readoption with amendments was published at 52 N.J.R. 1730(a) in the New Jersey Register. Id. at *5.

On January 6, 2021, after the notice and comment period, The Board of Education approved the readoption with amendments. Id. at *6.

Hillside's Transportation Policy, adopted on October 19, 2000, and amended on October 17, 2019, was in effect at the time transportation costs were incurred and that Policy indicated that the Board of Education shall provide transportation services for students with special needs in accordance with N.J.A.C. 6A:27-5.1 and with their Individualized Education Program. (See Pet. Opp. to Resp. Motion to Dismiss, Exh. A.) Notably, there is no mention of the amendment adding subsection (b) to N.J.A.C. 6A:27-5.1 because it had not yet been added at that time. Ibid.

I. Standards for a Motion for Summary Decision

In an Office of Administrative Law matter, "Summary decision is the administrative counterpart to summary judgment in the judicial arena." Bacchues v. Bd. of Trustees, Police and Firemen's Retirement System of New Jersey, 2021 N.J. AGEN LEXIS 744 (2021) (initial decision). N.J.A.C. 1:1-12.5 states that a Motion for Summary Decision is granted when "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). Furthermore, "When a motion for summary decision 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." N.J.A.C. 1:1-12.5(b). As the Office of Administrative Law has previously stated, "The standard governing a motion for summary decision is substantially the same as a motion for summary judgment under Rule 4:46-2. Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 121 (Appellant Div. 1995) (citing Frank v. Ivy Club, 228 N.J. Super. 40, 62 (Appellant Div. 1988))." Middletown Twp. Bd. of Educ. v. R.A. and B.A. o/b/o H.A., 2022 N.J. AGEN LEXIS 274 (2022). Furthermore:

In deciding a motion for summary judgment, the court must determine whether the evidence presented, assumed to be true, and viewed in the light most favorable to the non-moving party is "sufficient to permit a rational fact-finder to resolve the

alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995). The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)). In other words, the essential question is “whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one-sided that one party must prevail as a matter of law.” Brill, 142 N.J. at 533 (citing Liberty Lobby, 477 U.S. at 250).

[Middletown Twp. Bd. of Educ. v. R.A. and B.A. o/b/o H.A., 2022 N.J. AGEN LEXIS 274 (2022)].

II. Transportation Costs

A. Determining District of Residence

The present district of residence “[r]eferred to in the first paragraph of N.J.S.A. 18A:7B-12(b) 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.” N.J.A.C. 6A:23A-19.2(a)(1). Alternatively, the present district of residence may be determined to be the district of the child’s parent(s) or guardian(s) as of the date of the child’s most recent placement by the State agency. Id. at § (a)(2).

The Commissioner or the Commissioner’s designee shall determine the “present district of residence” or “district of residence” based upon the address submitted by the Department of Children and Families. Id. at § (b). As noted above, it is undisputed that respondent Hillside is J.W.’s resident district for purposes of educational funding and was the resident district during the 2017-18 and 2018-19 school terms.

In this case, The Department of Children and Families requested that the DOE determine the district of residence for J.W. who had been placed at AMRH since April 18, 2018. The DOE found that Hillside was the district of residence and responsible district for J.W. (See Exhibit A to Petition).

B. Allocating the Cost of Transportation

The expenditure of a resident district board of education for the transportation of eligible charter school students with disabilities who reside outside the district in which the charter school is located and eligible choice program students with disabilities shall not exceed the maximum per student expenditure for nonpublic school transportation. N.J.A.C. 6A:27-5.1. As of the January 6, 2021, amendment to this regulation, if the cost of transportation does exceed the maximum allowable for a given year, the charter school or choice district shall pay the full amount in excess of the annual maximum set for that school term to be paid by the resident district. Id. at § (b)(1). Under no circumstances are the parents or guardians of a student with disabilities responsible for payment of the cost of transportation services required by the student's IEP. Id. at § (b)(2).

I. Dismissal for Failure to Join a Necessary Party

A person subject to service of process shall be joined as a party to an action if (1) complete relief cannot be accorded among the existing parties in that person's absence, or (2) the person claims an interest in the subject of the action and is so situated that the disposition of the action in that person's absence may either (i) impair or impede the person's ability to protect their interest, or (ii) cause any of the existing parties to be subject to a substantial risk of incurring double, multiple, or other inconsistent obligations by reason of the claimed interest. R. 4:28-1(a). If a person should be joined pursuant to this rule but cannot be served with process, the court shall determine whether it is appropriate to proceed with the existing parties or dismiss the case because that person is deemed an indispensable party. Id. at § (b). A judge is to consider the following factors when making such determination: the extent to which a judgment rendered in the person's absence might be prejudicial to that person or existing parties; the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; whether a judgment rendered in the person's absence will be adequate; and whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Ibid.

The New Jersey Supreme Court has described an indispensable party as one having "an interest inevitably involved in the subject matter before the court and a judgment cannot justly be made between litigants without either adjudging or necessarily affecting the absentee's interest." H.S. o/b/o A.S. v. Cherry Hill Twp. Bd. of Educ., EDS 10013-20, 2020 N.J. AGEN LEXIS 683 at *9, Final Decision (Oct. 28, 2020) (quoting Allen B. DuMont Labs v Marcalus Mfg. Co., 30 N.J. 290, 298 (1959)). In Carol Graves v. The State-Operated Sch. Dist. of Newark, the ALJ dismissed count four of the petition regarding alleged segregation violations because certain omitted charter schools were deemed indispensable parties so far as they would have had to comply with N.J.S.A. 18A:36A-7 and N.J.S.A. 18A:36A-8 to grant petitioners requested relief but were not joined. EDU 10677-14, 2015 N.J. AGEN LEXIS 250 at *28-29, Initial Decision (Apr. 28, 2015), adopted, Comm'r (June 15, 2015).

II. Hillside's Motion to Dismiss Must be Denied Because Manchester Township is not a Necessary Party to this Matter

The Manchester Township Charter School that J.W. attended during 2017-18 and 2018-19 is not a necessary or indispensable party whose absence affects the ability of this Tribunal to afford complete relief to the parties. Unlike H.S. o/b/o A.S. v. Cherry Hill Twp. Bd. of Educ., the charter school does not have an interest inevitably involved in the subject matter before the court and a judgment can justly be made between litigants without either adjudging or necessarily affecting the absentee's interest. Likewise, the charter school does not have an interest in this matter such that the disposition of the action in its absence may either (i) impair or impede its ability to protect its interest, or (ii) cause any of the existing parties to be subject to a substantial risk of incurring double, multiple, or other inconsistent obligations by reason of the claimed interest. If the present dispute took place after the adoption of N.J.A.C. 6A:27-5.1(b), then respondent would be correct in asserting that the charter school would be responsible for covering transportation expenses in excess of the annual maximum required for a resident district school. Since that is not the case, respondent is misguided in its application of the regulation to the present matter.

Unlike in Carol Graves v. The State-Operated Sch. Dist. of Newark, when joining the various charter schools was necessary because they needed to comply with N.J.S.A. 18A:36A-7 and N.J.S.A. 18A:36A-8 in order to grant petitioners' requested relief, the present matter does not require joining Manchester Township because they are not liable for any share of J.W.'s transportation cost for either the 2017-18 or 2018-19 school terms.

Even if Manchester Township was liable under NJAC 6A:27-5.1(b), and therefore a necessary party to this matter, the proper step would be to add it as a party rather than dismiss the case because there is no evidence that Manchester Township is an indispensable party due to an inability to serve the process upon it.

III. Respondent was the Party Liable for J.W.'s Transportation Costs during the 2017-18 and 2018-19 school terms

MOESC accurately argues that the regulation which Hillside relies on, N.J.A.C. 6A:27-5.1(b), was not adopted until after the 2017-18 and 2018-19 school terms. It is clear that Hillside's own transportation policy, enacted in 2000 and revised in October 2019, evinces its duty to provide transportation to students with special needs as a "related service" pursuant to N.J.A.C. 6A:27-5.1 and N.J.S.A. 18A:39-1 et seq. The New Jersey Division of Child Protection and Permanency determined J.W.'s resident district to be Hillside. The parties do not contest this assignment.

Hillside argues that the lack of explicit allocation of excess transportation expenses during the 2017-18 and 2018-19 school terms "[l]eaves the matter open to interpretation, providing grounds to dismiss petitioner's claims." This argument, however, rests solely upon a lack of precedent rather than the existence of precedent and is therefore unavailing because it fails to provide a basis for allocating this cost to the choice school in Manchester Township during the relevant period preceding the amendment to N.J.A.C. 6A:27-5.1.

Respondent also argues that the legislative intent of N.J.S.A. 18A:36A-13 is a "[d]eliberate delegation of regulatory authority over non-resident student transportation to the State Board [which] indicates an intent to shift financial responsibility for excess costs

to charter schools. This distinction logically extends to disabled students attending out-of-district charter schools . . .” However, N.J.S.A. 18A:36-13 does not address special education students with disabilities. Also, that statute does not address choice schools whereas N.J.A.C. 6A:27-5.1(b) does differentiate between (1) eligible charter school students with disabilities who reside outside the district in which the charter is located and (2) students with disabilities who attend an eligible choice program (J.W. in this matter).

Lastly, respondent argues that subjecting it to liability for J.W.’s transportation costs is unduly burdensome because it would “[d]isincentivize charter schools from responsibly managing transportation costs, knowing resident districts bear the financial burden.” This argument has little merit because the opposite has been true ever since the amendment to N.J.A.C. 6A:27-5.1. What was once respondent’s valid concern is no longer a valid reason to dismiss petitioner’s claim because settling this matter under the laws and regulations in effect during the 2017-18 and 2018-19 school terms has no bearing upon management of transportation costs thereafter. The present framework actually does the opposite and ensures that a charter or choice school will cover the cost of transporting a student once the resident district has paid the statutory maximum under N.J.S.A. 18A:39-1.

For the foregoing reasons, **I CONCLUDE** Hillside’s Motion for Summary Decision should be denied.

I also **CONCLUDE**, that Hillside, as the resident district in this matter, was the party liable for providing transportation for J.W. to his choice charter school in Manchester Township because the regulation providing that the choice charter school covers the cost of transportation in excess of the annual maximum was not yet effective during the relevant time period. Moreover, Hillside’s own Policy, in place at the time the transportation costs were incurred, indicated that the Board of Education shall provide transportation services for students with special needs in accordance with N.J.A.C. 6A:27-5.1 and with their Individualized Education Program. (See Pet. Opp. to Resp. Motion to Dismiss, Exh. A.)

In this case, Hillside served its motion with a brief and Certification. MOESC then opposed the motion but did not cross-move for summary decision. Nevertheless, in viewing the certifications and pleadings in the light most favorable to respondent Hillside I **CONCLUDE** that no genuine issue of material fact exists and that MOSC is entitled to prevail as a matter of Law on its claim against Hillside in for the cost of transportation services it provided to J.W. during the 2017-18 and 2018-19 school terms.

ORDER

For the reasons set forth above,

IT IS on this 6th day of August 2025 **ORDERED** that:

1. Respondent's Motion for Summary Decision is **DENIED**.
2. Summary Decision be and hereby is **GRANTED** in favor of Petitioner MOESC on its claim against Respondent for \$44,195.59 in transportation services.

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**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and

Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.



August 7, 2025

DATE

WILLIAM J. COURTNEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

WJC/db

PAPERS CONSIDERED

1. April 24, 2024 Petition, with exhibits
2. June 12, 2024 Answer
3. September 6, 2024 Notice of Motion for Failure to Join a Necessary Party
4. Undated Certification of Raymond Hamlin filed with Motion to Dismiss for Failure to Join a Necessary Party
5. Brief in Support of Motion for Summary Judgement
6. December 3, 2024 letter Brief in Opposition to the Motion to Dismiss for Failure to Join a Necessary Party
7. February 2018 IEP
8. Hillside's Reply to MOESC opposition to Motion to Dismiss Petitioners' Claims