



## NEW JERSEY LAW REVISION COMMISSION

### Revised Draft Tentative Report Addressing

### “School District of Residence” in the Charter School Program Act

**February 08, 2021**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **April 19, 2021**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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## Executive Summary<sup>1</sup>

The New Jersey Constitution mandates that “[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children of the State between the ages of five and eighteen years.”<sup>2</sup> In addition to the State’s program of public education, the Legislature has recognized that charter schools “can assist in promoting comprehensive educational reform by providing a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom.”<sup>3</sup>

The Commissioner of Education provides approval and grants charters to charter schools under the Charter School Program Act (CSPA).<sup>4</sup> These charter schools are considered public schools that are operated independently of a local board of education and are managed by a board of trustees.<sup>5</sup> The funding for charter schools is provided by federal, state, and local aid but is not equivalent to the per pupil funding of traditional schools.<sup>6</sup> In recent years, the question of who is responsible for paying for students to attend charter schools in districts other than those in which the students live has been the subject of litigation.<sup>7</sup>

In *Bd. of Educ. of Twp. of Piscataway v. New Jersey Dept. of Educ.*, the Appellate Division considered whether a local board of education was obligated to provide funding for its students enrolled in charter schools located in other school districts.<sup>8</sup> The decision turned on the meaning of “school district of residence,” which is not defined in the CSPA.<sup>9</sup> The Commission recommends modification of the statutory language to address the ambiguity identified by the Court.

## Statutes Considered

N.J.S. 18A:36A-12 provides, in relevant part:

b. The **school district of residence** shall pay directly to the charter school for each student enrolled in the charter school who resides in the district an amount equal to 90% of the sum of the budget year equalization aid per pupil, the prebudget year general fund tax levy per pupil inflated by the CPI rate most recent to the calculation, and the employer payroll tax per pupil that is transferred to the school district pursuant to subsection d. of section 1 of P.L.2018, c. 68. In addition, the school district of residence shall pay directly to the charter school the security categorical aid attributable to the student and a percentage of the district's special

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<sup>1</sup> Preliminary research for this memorandum was provided by Rabiya Khan, Student Extern to the New Jersey Law Revision Commission, Fall 2020 (B.A. cand., New Jersey Inst. of Tech.).

<sup>2</sup> N.J. CONST. of 1947, art. VIII, § IV, ¶ 1 (West, 2020).

<sup>3</sup> N.J. STAT. ANN. § 18A:36A-2 (West 2020).

<sup>4</sup> N.J. STAT. ANN. § 18A:36A-3 (West 2020).

<sup>5</sup> N.J. STAT. ANN. § 18A:36A-3(a) (West 2020).

<sup>6</sup> N.J. STAT. ANN. § 18A:36A-2(b) (West 2020).

<sup>7</sup> See *Highland Park Bd. of Educ. v. Hespe (Highland Park I)*, No. A-3890-14 (App. Div. Jan. 24, 2018), *certif. den.*, 233 N.J. 485 (2018).

<sup>8</sup> *Bd. of Educ. of Twp. of Piscataway v. New Jersey Dept. of Educ.*, 2019 WL 2402545 \*1 (App. Div. Jun. 07, 2019).

<sup>9</sup> *Id.*

education categorical aid equal to the percentage of the district's special education students enrolled in the charter school and, if applicable, 100% of preschool education aid. The district of residence shall also pay directly to the charter school any federal funds attributable to the student... (Emphasis added).

### **Background**

At the time that the Court considered *Bd. of Educ. of Twp. of Piscataway v. New Jersey Dept. of Educ.*, the Piscataway Township Public School District (Piscataway) did not maintain any charter schools in the municipality.<sup>10</sup> A number of Piscataway's resident students, however, attended charter schools located in other school districts.<sup>11</sup>

On motion for summary decision, Piscataway sought a determination from the New Jersey Commissioner of Education that would relieve the municipality from "any obligation to fund out-of-district [student] placements" in charter schools.<sup>12</sup> The Department of Education (Department) cross-moved for summary decision and argued that "the language and history of the [CSPA], and its implementing regulations, clearly demonstrate that resident districts are responsible for paying for their students to attend charter schools regardless of the charter school's location."<sup>13</sup> The matter was transmitted to the Office of Administrative Law (OAL) for disposition as a contested case.<sup>14</sup>

The Administrative Law Judge (ALJ) determined that the meaning of the term "district of residence" as used in N.J.S. 18A:36A-12(b) was "clearly ambiguous."<sup>15</sup> After a review of the regulatory definition of this term and the legislative history of this statute, the ALJ concluded "that the interpretation that all school districts must fund their students' attendance at charter schools irrespective of location was consistent with the 'overall purpose of the CSPA', which declares that '[a] charter school shall be open to all students on a space available basis.'"<sup>16</sup> The ALJ said that "what triggers a school district's funding obligation is the mere fact that one of its residents is enrolled in a charter school, irrespective of location," and noted that the term "district of residence" as used in N.J.S. 18A:36A-12(b) "is reasonably interpreted as the student's district of residence and not the charter school's district of residence."<sup>17</sup>

The Commissioner ultimately adopted the decision of the ALJ.<sup>18</sup> Piscataway appealed, as of right, to the Superior Court, Appellate Division.<sup>19</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at \*2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at \*2-3.

<sup>17</sup> *Id.* at \*4.

<sup>18</sup> *Id.* at \*5.

<sup>19</sup> *Id.*

## Analysis

The question of whether a local board of education is obligated to provide funding for its students enrolled in charter schools located in other school districts is not a new one. The Appellate Division addressed this issue in the unpublished case of *Highland Park Bd. of Educ. v. Hesper (Highland Park I)*.<sup>20</sup> In that case, the Court rejected Highland Park’s argument that only the charter school’s district of residence was obligated to pay for its students to attend the school.<sup>21</sup> The plain language of N.J.S. 18A:36A-12(b), according to the Court, “expressly provides that the ‘school district of residence’ must pay the charter school for ‘each student’ enrolled in the school.”<sup>22</sup> Thus, the term school district of residence, as used in N.J.S. 18A:36A-12(b), “refers to the district where the student resides not the district where the charter school is located.”<sup>23</sup>

Pursuant to the funding statute, the “school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district...”<sup>24</sup> Although the term “school district of residence” is not defined in the CSPA, the Court in *Bd. of Educ. of Twp. of Piscataway* determined that “it would make no sense to interpret ‘school district of residence’ to mean ‘district of residence.’”<sup>25</sup> The Court reasoned, “[g]iven that both resident and non-resident students can attend a charter school, the term “school district of residence” logically means the district where the student resides.”<sup>26</sup> The Court noted that “[a] school is located in a district, it does not **reside** in a district.”<sup>27</sup>

The Court concluded that the Commissioner correctly determined that the Department properly implemented the funding requirements of N.J.S. 18A:36A-12(b) by obligating the “district of residence” and a “non-resident district” to fund their students’ attendance at charter schools. Thus, pursuant to N.J.S. 18A:36A-12(b), Piscataway was obligated to provide funding for its students enrolled in charter schools located outside its school district.

## Conclusion

N.J.S. 18A:36A-12 does not define the term school district of residence. The Appendix includes proposed amendments to the language of N.J.S. 18A:36A-12 and N.J.S. 18A:36C-7.1 based on the decision in *Bd. of Educ. of Twp. of Piscataway v. New Jersey Dept. of Educ.* and guidance provided by the Commission.

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<sup>20</sup> *Bd. of Educ. of Twp. of Piscataway v. New Jersey Dept. of Educ.*, 2019 WL 2402545 \*1 (App. Div. Jun. 07, 2019) citing *Highland Park Bd. of Educ. v. Hesper (Highland Park I)*, No. A-3890-14 (App. Div. Jan. 24, 2018), *certif. denied*, 233 N.J. 485 (2018).

<sup>21</sup> *Id. slip op.* at 19.

<sup>22</sup> *Id.* at 16.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Bd. of Educ. of Twp. of Piscataway*, 2019 WL 2402545 at \*7. The Court noted that the term “district of residence” is defined in N.J.A.C. 6A:11-1.2; N.J.A.C. 6A:23A-15.1. The Court determined that a review of the term both in the context of the CSPA as a whole and in light of the legislative history rejected the Board’s attempt to equate the two.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* (Emphasis added).

## Appendix

The proposed modifications to **N.J.S. 18A:36A-12** and **N.J.S. 18A:36C-7.1** (shown with ~~strikethrough~~, or underlining), follow:

### **18A:36A-12. School district of residence to pay charter school for each resident student attending charter school; amount of payment**

a. ~~(Deleted by amendment, P.L.2007, c. 260).~~

~~b. a.~~ For each student who is domiciled within a district, and who is enrolled in a charter school, the school district of residence shall pay the following directly to the charter school, as applicable: for each student enrolled in the charter school who resides in the district

(1) an amount equal to 90% of the sum of the budget year equalization aid per pupil;

(2) the prebudget year general fund tax levy per pupil inflated by the CPI rate most recent to the calculation; ~~and~~

(3) the employer payroll tax per pupil that is transferred to the school district pursuant to subsection d. of section 1 of P.L.2018, c. 68;

~~(4) In addition, the school district of residence shall pay directly to the charter school the security categorical aid attributable to the student; and~~

(5) a percentage of the district's special education categorical aid equal to the percentage of the district's special education students enrolled in the charter school; ~~and,~~

~~(6) if applicable, 100% of preschool education aid;~~ and

~~(7) The district of residence shall also pay directly to the charter school any federal funds attributable to the student.~~

c. ~~(Deleted by amendment, P.L.2007, c. 260).~~

~~d. b.~~ Notwithstanding the provisions of subsection ~~b. a.~~ of this section, in the case of a student who was not included in the district's projected resident enrollment for the school year, the State shall pay 100% of the amount required pursuant to subsection ~~b. a.~~ of this section for the first year of the student's enrollment in the charter school.

~~e. c.~~ The State shall make payments required pursuant to subsection ~~d. b.~~ of this section directly to the charter school.

d. For purposes of this section, "school district of residence" means the school district in which a student is domiciled.

### Comments

The term “school district of residence” is not defined in 18A:36A-12, creating ambiguity over whether it refers to a student’s residence or a charter school’s physical location. Furthermore, “district of residence” is defined in N.J.A.C. 6A:11-1.2 and N.J.A.C. 6A:23A-15.1 as referring to a charter school’s physical location, in conflict with the findings of the Appellate Division in *Highland Park Bd. of Educ. v. Hespe (Highland Park I)* and *Bd. of Educ. of Twp. of Piscataway v. New Jersey Dept. of Educ.* The above modification defines the term “school district of residence” in the text of 18A:36A-12 for the purposes of this section according to the holdings of both decisions.

Subsections a. and c. were deleted by amendment in 2007 and the remaining references to those subsections are proposed to be deleted, with the balance of the subsections re-lettered. For ease of access and reference, new subsection a. has been divided into seven parts each stating an individual payment requirement.

### **18A:36C-7.1. Renaissance school project located in temporary facility; funding**

Notwithstanding the provisions of subsection e. of section 7 of P.L.2011, c. 176 (C.18A:36C-7) to the contrary, if after approval, a renaissance school project is located in a temporary facility pending completion of the newly constructed facility or substantially reconstructed facility, the renaissance school project shall be funded pursuant to subsection ~~b. a.~~ of ~~section 12 of P.L.1995, c. 426 (C.18A:36A-12)~~ N.J.S. 18A:36A-12 until it has obtained final site plan approval for the newly constructed facility or begun construction on the facility to be substantially reconstructed, provided that a renaissance school project shall not be located in a temporary facility for more than three years.

### Comments

A citation to the previous subsection b. of N.J.S. 18A:36A-12 has been changed to subsection a. to reflect the re-lettering in that statute.