

LEARNING COMMUNITY CHARTER SCHOOL, :  
SOARING HEIGHTS CHARTER SCHOOL, :  
ETHICAL COMMUNITY CHARTER SCHOOL, :  
AND GOLDEN DOOR CHARTER SCHOOL, :  
:  
PETITIONERS, :  
:  
V. : COMMISSIONER OF EDUCATION  
:  
DECISION  
BOARD OF EDUCATION OF THE CITY OF :  
JERSEY CITY, HUDSON COUNTY AND :  
NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, :  
:  
RESPONDENTS. :

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### SYNOPSIS

The petitioners – four Jersey City charter schools – challenged the manner in which charter schools are funded pursuant to the Charter School Program Act of 1995 (CSPA), *N.J.S.A.* 18A:36A-1 to -18, and the School Funding Reform Act of 2008 (SFRA), *N.J.S.A.* 18A:7F-43 to -63. Petitioners contend that they are statutorily and constitutionally entitled to additional funding, specifically a portion of the State “Adjustment Aid” allocated to the Jersey City Board of Education. They further assert that New Jersey’s Thorough and Efficient education requirement mandates that charter schools receive at least the “base per pupil amount” of funding, and this requires a portion of Jersey City’s Adjustment Aid to raise the city’s charter school funding to the mandated minimum level. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there is no genuine issue of material fact herein, and the matter is ripe for summary decision; the funding for charter schools is specifically prescribed by statute; pursuant to the statutory framework, petitioners are not entitled to receive a portion of the Adjustment Aid received by Jersey City; the Appellate Division has recognized that charter schools are not required to be funded at the same level as traditional public schools; the funding scheme for charter schools represents the Legislature’s judgment in maximizing the allocation of scarce State resources; the thorough and efficient mandate in the New Jersey Constitution requires that all students have an equal educational opportunity; a funding disparity between petitioners’ schools and traditional public schools in Jersey City does not demonstrate a lack of equal educational opportunity for petitioners’ students as their attendance at a charter school is voluntary; they have the option of attending a traditional public school in Jersey City that receives Adjustment Aid, and are therefore not being denied Adjustment Aid. The ALJ concluded that petitioners failed to establish a claim under the thorough and efficient clause of the State Constitution, and have not demonstrated that current funding received deprives petitioners’ students of a thorough and efficient education. Accordingly, the ALJ granted summary decision to the respondents, denied petitioners’ motion for summary decision, and dismissed the petition.

Upon full consideration, the Commissioner adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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July 6, 2015

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This controversy involves a challenge to the manner in which charter schools are funded pursuant to the Charter School Program Act of 1995 (CSPA), *N.J.S.A.* 18A:36A-1 to -18, and the School Funding Reform Act of 2008 (SFRA), *N.J.S.A.* 18A:7F-43 to -63. The record and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have petitioner’s exceptions – filed in accordance with *N.J.A.C.* 1:1-18.4 – and the New Jersey State Department of Education’s (“Department”) reply to the exceptions. The untimely reply filed by the Board of Education of the City of Jersey City (“Jersey City BOE”) was not considered by the Commissioner in rendering this determination.<sup>1</sup>

The petitioners – four charter schools located in Jersey City – contend that they are statutorily and constitutionally entitled to additional funding. (Amended Petition<sup>2</sup> at 2)

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<sup>1</sup> Jersey City BOE never sought an extension of time to file its reply, which was submitted over a month late.

<sup>2</sup> On January 23, 2012, the Acting Commissioner determined not to consider this matter as one for declaratory ruling pursuant to his discretionary authority under *N.J.A.C.* 6A:3-2.1(a), but instead found that it should proceed as a Petition of Appeal.

Specifically, petitioners assert that Jersey City BOE should be required to share its State “Adjustment Aid”<sup>3</sup> with petitioners pursuant to the CSPA and the SFRA. In further support of their claim, petitioners argue that the Thorough and Efficient (T&E) clause of the New Jersey Constitution requires charter schools to be funded at mandated minimum levels and that – without a portion of Jersey City BOE’s Adjustment Aid – petitioners’ funding falls below that minimum. Therefore, petitioners maintain they should receive at least the same “base per pupil amount”<sup>4</sup> given to the district’s public schools. Respondents contend that petitioners are not entitled to any of Jersey City BOE’s Adjustment Aid under the plain language of the CSPA or the SFRA, and that petitioners fail to establish a valid claim for additional funding under the T&E clause of the New Jersey Constitution.

Following transmittal to the OAL, Jersey City BOE and the Department filed motions for summary decision, and petitioners cross-moved for summary decision. Ultimately, the Administrative Law Judge issued a comprehensive Initial Decision concluding that: 1) the matter was ripe for summary decision; 2) pursuant to the relevant statutory framework, petitioners are not entitled to receive any portion of Jersey City BOE’s Adjustment Aid; and 3) petitioners failed to establish a claim under the T&E clause of the New Jersey Constitution. In their exceptions, petitioners express their disagreement with the outcome and essentially recast and reiterate the arguments presented below, which were comprehensively addressed by the ALJ in her Initial Decision. Consequently, the Commissioner finds petitioners’ exceptions do not warrant additional discussion.<sup>5</sup>

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<sup>3</sup> “Adjustment Aid” is defined in the SFRA, at *N.J.S.A.* 18A:7F-58, and discussed in detail by the ALJ in her Initial Decision.

<sup>4</sup> “Base per pupil amount” is defined in the SFRA, at *N.J.S.A.* 18A:7F-45, and discussed in detail by the ALJ in her Initial Decision.

<sup>5</sup> The Department replied to petitioners’ exceptions and expressed its support for the ALJ’s findings of fact and conclusions of law.

Upon full consideration, the Commissioner adopts the Initial Decision as the final decision in this matter for the reasons set forth therein. Accordingly, respondents' motions for summary decision are granted, petitioners' cross-motion for summary decision is denied, and the amended petition is hereby dismissed.

IT IS SO ORDERED.<sup>6</sup>

COMMISSIONER OF EDUCATION

Date of Decision: July 6, 2015

Date of Mailing: July 7, 2015

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<sup>6</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c.36 (N.J.S.A. 18A:6-9.1)*.