

New Jersey Commissioner of Education

Final Decision

Boonton Education Association and
Robert Davis,

Petitioner,

v.

Board of Education of the Town of Boonton,
Morris County,

Respondent.

Synopsis

In this matter on remand, originally filed in 2021, petitioners alleged that the respondent Board failed to provide an employee health plan equivalent to the New Jersey Educators Health Plan (NJEHP). Petitioners asserted that because the date of termination for dependent coverage in the Board’s health plan differs from that of the NJEHP, the Board failed to fulfill its statutory obligation to provide a NJEHP-equivalent plan to its employees. Specifically, petitioners argued that while the NJEHP extends coverage for dependents until the end of the calendar year in which they turn 26 years old, the Board’s plan terminates coverage for dependents at the end of the month in which they turn 26 years old, and that this difference violates *N.J.S.A. 18A:16-13.2(a)(1)* and (2). After the matter was dismissed by the Office of Administrative Law (OAL) on jurisdictional grounds in October 2021, the Commissioner reversed the decision and remanded to the OAL for supplementation of the record, which lacked the detail necessary for the Commissioner to reach a decision on the merits of whether the Board’s health plan is equivalent to the NJEHP. The parties filed cross motions for summary decision.

On remand, the ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; based upon the plain language of *N.J.S.A. 18A:16-13.2* and *N.J.S.A. 52:14-17.46.13*, the termination date of coverage for dependents described at *N.J.A.C. 17:9-3.1* is not part of the plan design; therefore, the Board was not required to offer a plan which extends coverage for dependents until the end of the calendar year in which they turn 26 years old in order to comply with *N.J.S.A. 18A:16-13.2(a)(1)* and (2); rather, the Board’s plan must comport with the plan design elements listed at *N.J.S.A. 52:14-17.46.13(f)* to be deemed an NJEHP-equivalent plan; *N.J.S.A. 18A:16-13.2* does not require that the Board offer an “identical” plan, and it limits “the equivalent of” to “as that plan is described in *N.J.S.A. 52:14-17.46.13*—which description does not reference dependent age. Accordingly, the ALJ granted the Board’s cross-motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ that the plain language of *N.J.S.A. 18A:16-13.2(a)(1)*, limits the plan equivalency determination to the plan design elements listed at *N.J.S.A. 52:14-17.46.13(f)*—none of which reference dependent age or eligibility for coverage. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

<p>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.</p>

185-24

OAL Dkt. No. EDU 09844-21 (EDU 04105-21 on remand)

Agency Dkt. No. 45-3/21

New Jersey Commissioner of Education

Final Decision

Boonton Education Association and
Robert Davis,

Petitioners,

v.

Board of Education of the Town of Boonton,
Morris County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioners pursuant to *N.J.A.C. 1:1-18.4*, the Board's reply thereto, as well as the reply thereto from participant State Health Benefits Commission, have been reviewed and considered.¹

Petitioners allege that respondent Board is in violation of *N.J.S.A. 18A:16-13.2(a)(1)* and (2) by failing to provide a health plan to its employees that is equivalent to the New Jersey Educators Health Plan (NJEHP). That statute states:

(1) Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning January 1, 2021 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with P.L.1979, c.391 (C.18A:16-12 et seq.) shall offer to its employees, and their

¹ On January 11, 2023, the Administrative Law Judge (ALJ) denied the State Health Benefits Commission's (SHBC) motion to intervene but granted SHBC leave to participate pursuant to *N.J.A.C. 1:1-16.6*.

dependents if any, the equivalent of the New Jersey Educators Health Plan in the School Employees' Health Benefits Program [SEHBP] as that plan design is described in subsection f. of section 1 of P.L.2020, c.44 (C.52:14-17.46.13).

Beginning January 1, 2022 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with P.L.1979, c.391 (C.18A:16-12 et seq.) shall also offer a plan for its employees, and their dependents if any, that is the equivalent of the Garden State Health Plan in the School Employees' Health Benefits Program. The board shall provide an enrollment period prior to January 1, 2022.

(2) The plans under this section shall be offered by the employer regardless of any collective negotiations agreement between the employer and its employees in effect on the effective date [July 1, 2020] of this act, P.L.2020, c.44, that provides for enrollment in other plans offered by the employer.

No new health care benefits plans, other than those specified in paragraph (1) of this subsection, shall be added by the employer from January 1, 2021 through December 31, 2027 unless the provisions of any collective negotiations agreement entered into before or after the effective date of this act, P.L.2020, c.44, results in additional premium cost reductions. Nothing in this section shall prohibit an employer from offering health care benefits plans that existed prior to the effective date of this act.

[*N.J.S.A. 18A:16-13.2(a)* (emphasis added).]

Petitioners assert that because the date of termination for dependent coverage in the Board's private plan differs from that of NJEHP, the Board has not fulfilled its statutory obligation to provide a NJEHP-equivalent plan to its employees. While NJEHP extends coverage for dependents until the end of the calendar year in which they turn 26 years old, the Board's plan terminates coverage for dependents at the end of the month in which they turn 26 years old.

The Board maintains that it has offered an NJEHP-equivalent plan in accord with *N.J.S.A. 52:14-17.46.13(f)*. It asserts that the date of termination of coverage for dependents is an eligibility criterion described in *N.J.A.C. 17:9-3.1* rather than a part of the plan design mandated by *N.J.S.A. 52:14-17.46.13*. Title 17, Chapter 9 of the New Jersey Administrative Code, which contains regulations pertaining to the State Health Benefits Program (SHBP), defines “Dependents” in part as “an employee’s spouse, eligible domestic or civil union partner and the employee’s children through the end of the calendar year in which they reach the age of 26 years.” *N.J.A.C. 17:9-3.1* (emphasis added). However, dependent eligibility is not referenced within *N.J.S.A. 52:14-17.46.13(f)*, which dictates that “[t]he plan design of the New Jersey Educators Health Plan” must include over twenty specific plan elements listed in the statutory text. Those elements include in-network and out-of-network coverage, out-of-pocket maximums, deductibles, and copayment amounts, and pharmacy coverage, among others.

As the parties agree that the material facts are undisputed, they filed cross-motions for summary decision. The ALJ concluded that petitioners’ claim was not supported by the applicable statutes. Specifically, the ALJ reasoned that based upon the plain language of *N.J.S.A. 18A:16-13.2* and *N.J.S.A. 52:14-17.46.13*, the termination date of coverage for dependents described at *N.J.A.C. 17:9-3.1* is not part of the plan design. Therefore, the Board was not required to offer a plan which extends coverage for dependents until the end of the calendar year in which they turn 26 years old in order to comply with *N.J.S.A. 18A:16-13.2(a)(1)* and (2). Rather, the Board’s plan must comport with the plan design elements listed at *N.J.S.A. 52:14-17.46.13(f)* to be deemed an NJEHP-equivalent plan. Consequently, the ALJ granted the Board’s cross-motion for summary decision and dismissed the petition of appeal.

In their exceptions, petitioners acknowledge that *N.J.S.A. 52:14-17.46.13(f)* sets forth the plan design for the NJEHP. However, they contend that “the plan design is not the only aspect of the NJEHP plan which must be equivalent,” and that the meaning of “equivalent plan . . . extends to the level and type of health care benefits provided.” Petitioners’ Exceptions, at 3. To conclude otherwise, they assert, leads to an absurd result wherein the Board’s plan provides coverage for dependents that differs from the SEHBP’s coverage for dependents. *Id.* at 3-4. They argue that “the Legislature clearly intended that the benefits, not just the plan design, provided in the Board’s NJEHP plan be identical to those in the state’s NJEHP.” *Id.* at 4. They rely upon the SHBP definition of “Dependents” at *N.J.A.C. 17:9-3.1*, which they claim applies to employees in the SEHBP; a 1982 published Appellate Division opinion issued long before the enactment of Chapter 44; and an unpublished Appellate Division opinion which lacks precedential value. Ultimately, they contend that the ALJ’s interpretation of the statutory scheme was unreasonably narrow.²

In reply, the Board argues that petitioners “rely on a broad definition of the word ‘equivalent,’ which has no basis in the statute.” Board’s Exceptions, at 2. They assert that, pursuant to the plain language of the statutory scheme, “[t]he only aspects of the NJEHP for which the statute specifically requires private plans to match are the specified benefits spelled out in” *N.J.S.A. 52:14-17.46.13(f)*. *Id.* at 4-5. Accordingly, the Board contends that the ALJ correctly determined that the equivalency determination is limited by *N.J.S.A. 52:14-*

² Petitioners’ contention—raised in a footnote on page 5 of their exceptions—that the Board violated the square corners doctrine was not addressed by the ALJ in the Initial Decision and will not be considered by the Commissioner herein. See *Sullivan v. Port Auth. of N.Y. & N.J.*, 449 *N.J. Super.* 276, 281 (App. Div. 2017) (holding that legal issues raised in footnotes without adequate briefing will not be considered on appeal).

17.46.13(f), which does not reference dependent coverage eligibility or termination of dependent coverage.

Similarly, participant SHBC asserts that *N.J.A.C. 17:9-3.1* is not part of the plan design of the NJEHP. They claim that petitioners' arguments ignore the plain language of *N.J.S.A. 18A:16-13.2(a)(1)*, which expressly limits the Chapter 44 equivalency determination to the point-of-service out-of-pocket costs enumerated in *N.J.S.A. 52:14-17.46.13(f)*. They disagree with petitioners that benefits offered to employees of non-SEHBP participating local employers must be uniform, in all respects, to the benefits offered by the SEHBP to employees of its participating employers. They contend that if the Legislature had desired equivalency in every respect, then it could have forced all local education employers to participate in the SEHBP, which it did not. They also contend that the statutorily created SEHBP plan design committee, not the SHBC via *N.J.A.C. 17:9-3.1*, has the sole authority to create, modify, or terminate any plan or plan element pursuant to *N.J.S.A. 52:14-17.27(b)* and *17.46.3(e)*.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter for the reasons stated therein. It is well-settled that a statute's plain language "is typically the best indicator" of the Legislature's intent. *Facebook, Inc. v. State*, 254 N.J. 329, 353 (2023). The Commissioner concurs with the ALJ that, by its plain language, *N.J.S.A. 18A:16-13.2(a)(1)*, limits the plan equivalency determination to the plan design elements listed at *N.J.S.A. 52:14-17.46.13(f)*—none of which reference dependent age or eligibility for coverage. The SHBP definition of "Dependents" at *N.J.A.C. 17:9-3.1* is not a plan design element under this statutory scheme. Petitioners' contention that the Legislature did not intend for this result, or that this result is absurd, is unsupported by the statute's plain language or published case law.

Accordingly, the Board's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³



ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 10, 2024
Date of Mailing: May 10, 2024

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 09844-21

ON REMAND

OAL DKT. NO. EDU 04105-21

AGENCY DKT. NO. 45-3/21

**BOONTON EDUCATION ASSOCIATION
AND ROBERT DAVIS,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE
TOWN OF BOONTON, MORRIS COUNTY,**

Respondent.

Richard A. Friedman, Esq., for petitioners Boonton Education Association and Robert Davis (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C., attorneys)

James L. Plosia, Jr., Esq., for respondent Board of Education of the Town of Boonton, Morris County (Plosia Cohen, LLC, attorneys)

Alison Keating, Deputy Attorney General, for participant State Health Benefits Commission (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: August 21, 2023

Decided: February 29, 2024

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

Petitioners, Boonton Education Association and Robert Davis, allege that respondent Board of Education of the Town of Boonton, Morris County, violated N.J.S.A. 18A:16-13.2 by failing to offer a plan equivalent to the New Jersey Educators Health Plan.

PROCEDURAL HISTORY

On March 25, 2021, petitioners Boonton Education Association (Association) and Robert Davis filed with the New Jersey Department of Education (Department) a Petition of Appeal (Petition) requesting that the Commissioner enter an order declaring that respondent Board of Education of the Town of Boonton, Morris County (Board), is in violation of N.J.S.A. 18A:16-13.2(a)(1) and (2) by failing to provide a plan equivalent to the New Jersey Educators Health Plan (NJEHP); compelling the Board to provide a plan equivalent to the NJEHP, inclusive of eligibility terms that permit dependents to remain covered until the end of the relevant calendar year, to be effective January 1, 2021, in accordance with school laws; and compelling the Board to financially reimburse any affected Association members for any benefits or payment lost due to the Board's actions. On March 26, 2021, petitioners filed with the Department a letter amendment to Count One, paragraph 1 of the Petition and a corrected Exhibit A. The Commissioner acknowledged receipt of the Petition on March 23, 2021, and the letter amendment on April 13, 2021.

On May 5, 2021, respondent filed a motion to dismiss in lieu of answer for lack of jurisdiction. The Department transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department to hear and decide controversies and disputes arising

under school laws. The case was filed at the Office of Administrative Law (OAL) under docket number EDU 04105-21 on May 7, 2021.

On July 16, 2021, petitioners filed a brief in opposition to the motion to dismiss. On August 2, 2021, respondent filed a reply brief. By Initial Decision—Dismissal dated October 14, 2021, respondent's motion to dismiss was granted and the petition was dismissed. By Final Decision of the Commissioner, dated November 29, 2021, the Initial Decision—Dismissal was reversed, and the matter was remanded to the OAL, where it was filed on December 6, 2021. In pertinent part, the Final Decision states as follows:

Upon review, the Commissioner disagrees with the ALJ that the petition should be dismissed for lack of jurisdiction. N.J.S.A. 18A:16-13.2 provides that a board of education shall offer a health plan that is the equivalent of the NJEHP. A determination regarding whether a board of education has done so falls squarely within the Commissioner's jurisdiction. P.L. 2020, Chapter 44, outlines requirements for plans offered by employers who participate in the School Employees' Health Benefits Program (SEHBP), which is under the purview of the School Employees' Health Benefits Plan Design Committee or the State Treasurer, through the Division of Pensions and Benefits. These requirements are therefore codified as N.J.S.A. 52:17.46.13 through 16. However, none of these provisions require boards of education to offer equivalent plans if they do not participate in the SEHBP. Instead, non-participating boards are required to offer an equivalent plan based on N.J.S.A. 18A:16-13.2, an education statute. Under the standard principles of statutory construction, the Commissioner presumes that the Legislature intended this distinction when it enacted P.L. 2020, Chapter 44. Therefore, the Commissioner concludes that jurisdiction over whether a non-participating board's plan is equivalent to the NJEHP lies with the Commissioner.

Although the ALJ correctly found that dependent coverage is not provided for in the NJEHP plan description in the NJEHP statute, the lack of any such provision does not go to the procedural question of jurisdiction, but rather to the substantive question of whether a plan that differs from the NJEHP regarding dependent coverage satisfies the requirements of N.J.S.A. 18A:16-13.2. As the record thus far is limited to the jurisdictional issue raised in the motion to dismiss, the Commissioner is unable to reach a decision

regarding the merits of whether the Board's health plan is equivalent to the NJEHP.

Accordingly, the Initial Decision is reversed, and the matter is hereby remanded to the OAL for further proceedings consistent with this opinion.

Respondent appealed from the Final Decision. By Opinion dated October 19, 2022, the Appellate Division concluded that the Commissioner has jurisdiction to hear and decide the dispute but expressed no opinion on the merits of the dependent's coverage and equivalency issue.

On November 29, 2022, the State Health Benefits Commission (SHBC) filed a motion for leave to intervene, consisting of a letter brief. On December 8, 2022, petitioners filed a letter brief in opposition to the motion. On December 8, 2022, the SHBC filed a reply letter brief. On December 15, 2022, respondent filed a letter brief in support of the SHBC's motion for leave to intervene. By letter order dated January 11, 2023, SHBC was granted leave to participate—not intervene.

On February 15, 2023, petitioners Association and Robert Davis filed a motion for leave to amend the petition of appeal, consisting of a brief and certification with one exhibit—the proposed Amended Petition of Appeal. On February 24, 2023, respondent Board filed a letter brief in response to the motion, stating that respondent did not oppose the motion, but noting that the proposed amended petition would not change petitioners' argument. On February 28, 2023, petitioners filed a reply letter brief. By letter order dated March 21, 2023, petitioners' motion was granted. On March 24, 2023, petitioners filed the Amended Petition of Appeal. On April 3, 2023, respondent filed its Answer to the Amended Petition.

On June 15, 2023, the parties filed a joint stipulation of facts. On August 7, 2023, the parties filed briefs in support of cross-motions for summary decision. On August 7, 2023, participant also filed a brief relative to the cross-motions for summary decision. On August 21, the parties and the participant filed reply letter briefs.

JOINT STIPULATIONS OF FACT

The parties submitted a joint stipulation of facts as follows:

1. The Board and the Association are parties to a collective negotiations agreement setting forth the terms and conditions of employment for the period of 2018 through 2021 (“CNA”). These terms and conditions continue in effect after the expiration of the CNA.
2. To provide employees with health insurance, local boards of education have the option to participate in the School Employees’ Health Benefits Program (“SEHBP”) or by contracting with a private health insurance carrier.
3. If a board of education participates in the SEHBP, it must offer the following plans: the New Jersey Educator’s Health Plan (“NJEHP”); the SEHBP NJ Direct 10; and the SEHBP NJ Direct 15.
4. If a board of education does not participate in the SEHBP, it is required to offer the equivalent of the New Jersey Educators Health Plan (“NJEHP”) and the Garden State Health Plan, in addition to any other plans it offers. N.J.S.A. 18A:16-13.2.
5. The Board, having elected to provide its employees with private medical coverage, is not a participant in the SEHBP.
6. The SEHBP’s NJEHP plan terminates dependent coverage at the end of the calendar year in which the dependent turns twenty-six (26).
7. The Board’s NJEHP plan terminates dependent coverage at the end of the month in which the dependent turns twenty-six (26).
8. During the initial open enrollment for the Board’s NJEHP plan, the Board’s private insurer (Horizon) provided a summary sheet of the expected benefits and eligibility criteria for the NJEHP-equivalent plan which included a statement that the termination of dependent benefits would occur at the end of the year that a dependent turns 26. After the open enrollment period had ended, the Board advised that this was a mistake and that the dependent’s coverage would terminate at the end of the month that the dependent turns 26.

9. The Association contends the Board has not fulfilled its obligation to provide an NJEHP-equivalent plan and that the dependent date of termination constitutes a plan benefit as well as eligibility criteria.

10. The Board contends it has offered an NJEHP-equivalent plan because the dependent date of termination is an eligibility criteria rather than a benefit or part of the plan design set forth in subsection f. of section 1 of P.L. 2020, c. 44 (N.J.S.A. 52:14-17.46.13).

LEGAL ANALYSIS AND CONCLUSION

The crux of the parties' arguments, as reflected in their joint stipulation of facts, are that the Association contends that "the Board has not fulfilled its obligation to provide an NJEHP-equivalent plan and that the dependent date of termination constitutes a plan benefit as well as eligibility criteria" while the Board contends "it has offered an NJEHP-equivalent plan because the dependent date of termination is an eligibility criteria rather than a benefit or part of the plan design set forth in subsection f. of section 1 of P.L. 2020, c. 44 (N.J.S.A. 52:14-17.46.13)." Additionally, the participant argues that regulations governing dependent enrollment eligibility, such as N.J.A.C. 17:9-3, are not part of the statutory plan design.

N.J.S.A. 52:14-17.25 to -17.46.16, known as the New Jersey State Health Benefits Program Act (NJSHBP Act), established the SHBC and the State Health Benefits Plan Design Committee (SHB-PDC). N.J.S.A. 52:14-17.25; N.J.S.A. 52:14-17.27. The SHB-PDC has the responsibility for and authority over the various plans and components of those plans, including for medical benefits, prescription benefits, dental, vision, and any other health care benefits, offered and administered by the program, and has the authority to create, modify, or terminate any plan or component, at its sole discretion. N.J.S.A. 52:14-17.27(b).

N.J.S.A. 52:14-17.46.1 to -17.46.11, known as the School Employees' Health Benefits Program Act (SEHBP Act), established the School Employees' Health Benefits Commission (SEHBC) and the School Employees' Health Benefits Plan Design Committee (SEHB-PDC). N.J.S.A. 52:14-17.46.1; N.J.S.A. 52:14-17.46.3. The SEHB-

PDC has the responsibility for and authority over the various plans and components of those plans, including responsibility for medical benefits, prescription benefits, dental, vision, and any other health care benefits, offered and administered by the program and has the authority to create, modify, or terminate any plan or component, at its sole discretion. N.J.S.A. 52:14-17.46.3(e).

N.J.S.A. 18A:16-13.2 applies to local boards of education and employers, as specified in N.J.S.A. 18A:16-13.2(k),¹ who do not participate in the School Employees' Health Benefits Program (SEHBP). Any health insurance company may provide to local boards of education and to those employers defined pursuant to N.J.S.A. 52:14-17.46.2 who do not participate in the SEHBP the equivalent of the NJEHP in the SEHBP as that plan design is described in N.J.S.A. 52:14-17.46.13(f) and the Garden State Health Plan (GSHP) as that plan design is described in N.J.S.A. 52:14-17.46.13(d), notwithstanding the provisions of any other law, rule, or regulation, including any regulation of the New Jersey Department of Banking and Insurance, to the contrary. N.J.S.A. 18A:16-13.2. The term "employer" means local school district, regional school district, county vocational school district, county special services school district, jointure commission, educational services commission, State-operated school district, charter school, county college, any officer, board, or commission under the authority of the Commissioner of Education or of the State Board of Education, and any other public entity which is established pursuant to authority provided by Title 18A of the New Jersey Statutes, but excluding the State public institutions of higher education and excluding those public entities where the employer is the State of New Jersey. N.J.S.A. 52:14-17.46.2(c).

Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning January 1, 2021, and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with N.J.S.A. 18A:16-12 et seq. "shall offer to its employees, and

¹ N.J.S.A. 18A:16-13.2(k) states: This section shall also apply when health care benefits coverage is provided through an insurance fund or joint insurance fund or any other manner. This section shall apply to any employer, as that term is defined in section 32 of P.L.2007, c.103 (C.52:14-17.46.2), that is not a participating employer in the School Employees' Health Benefits Program. This section shall not apply to charter school or renaissance school employers unless they have a collective negotiations agreement with any of their employees in effect on or after the effective date [July 1, 2020] of P.L.2020, c.44.

their dependents if any, the equivalent of the [NJEHP] in the [SEHBP] as that plan design is described in [N.J.S.A. 52:14-17.46.13].” N.J.S.A. 18A:16-13.2(a)(1). The plans under this section shall be offered by the employer regardless of any collective negotiations agreement (CNA) between the employer and its employees in effect on the effective date [July 1, 2020] of this act, P.L.2020, c.44, that provides for enrollment in other plans offered by the employer. N.J.S.A. 18A:16-13.2(a)(2). Prior to January 1, 2021, each employer shall provide an enrollment period during which all employees who commenced employment prior to July 1, 2020, must select affirmatively a plan provided by the employer. N.J.S.A. 18A:16-13.2(b). If an employee fails to select affirmatively a plan during said enrollment period, the employer shall enroll the employee, and the employee’s dependents if any, in the equivalent NJEHP offered pursuant to N.J.S.A. 18A:16-13.2(a) for the year January 1, 2021, until December 31, 2021. Ibid. Beginning on January 1, 2021, an employee commencing employment on or after the July 1, 2020, but before January 1, 2028, who does not waive coverage, shall be enrolled by the employer in the equivalent NJEHP, or the equivalent GSHP if selected by the employee, as those plans are offered pursuant to N.J.S.A. 18A:16-13.2(a).

Per N.J.S.A. 52:14-17.46.13(f), which is specifically referenced in N.J.S.A. 18A:16-13.2, the plan design of the NJEHP shall be the following:

In Network Benefits	Coverage
Member Coinsurance:	10%, Applies Only to Emergency Transportation Care and Durable Medical Equipment
Deductible:	N/A
Out-of-Pocket Maximum:	\$500 Single/ \$1,000 Family (covers all in network copayments, coinsurance, and deductible)
Emergency Room Copayment:	\$125 (To be Waived if Admitted)
PCP Office Visit Copayment:	\$10
Specialist Office Visit Copayment:	\$15
Out-of-Network Benefits	Coverage
Member Coinsurance:	30% of the Out-of-Network Fee Schedule
Deductible:	\$350 / \$700
Out-of-Pocket Maximum:	\$2,000 Single / \$5,000 Family
Routine Lab:	Paid at Out-of-Network Benefit Level

Out-of-Network Fee Schedule:	200% of CMS - Medicare
Pharmacy	
Out-of-Pocket Maximum:	\$1,600 Single / \$3,200 Family (Indexed Annually Pursuant to Federal Law)
Generic Copayment:	\$5 Retail 30 Day Supply / \$10 Mail 90 Day Supply
Brand Copayment:	\$10 Retail 30 Day Supply/ \$20 Mail 90 Day Supply
Mandatory Generic:	Member Pays Difference in Cost Between Generic and Brand, Plus Brand Copayment
Formulary:	Closed Formulary as contracted with the Pharmacy Benefit Manager and the School Employees' Health Benefits Commission
Other	
Chiropractic, Physical Therapy, and Acupuncture:	Subject to the same Out-of-Network Limits as for the State Health Benefits Program as were in effect on June 1, 2020 to take effect as of July 1, 2020, or as soon thereafter as reasonably practicable.

Citing N.J.A.C. 17:9-3.1, petitioners allege that the “SEHBP’s health plans, including the NJEHP, require that coverage for dependents extends until the end of the calendar year in which the dependent turns twenty-six (26).” Petitioners further allege that the Board failed to offer an “equivalent” plan, because the NJEHP “provides for dependent coverage until the end of the calendar year in which the dependent turns 26,” that “[p]rior to the open enrollment period, the District provided employees with documents stating that dependent children are covered until the end of the calendar year in which they turn 26,” and that “after the open enrollment period had ended, the Board advised petitioner Robert Davis that members’ dependents . . . will have their coverage terminated at the end of the month the dependent turns 26.”

However, based upon the plain language of the statute, there can be no dispute that the Board “shall offer . . . **the equivalent of the NJEHP . . . as that plan is described in N.J.S.A. 52:14-17.46.13.**” (Emphasis added.) There is no reference to N.J.A.C. 17:9-3.1, which defines dependents and children “when used in this subchapter”—specifically, subchapter 3 (Dependents) of Chapter 9 (State Health Benefits Program) of Title 17.

Accordingly, the only question is whether the plan design comports with N.J.S.A. 52:14-17.46.13, and more specifically with N.J.S.A. 52:14-17.46.13(f), as to the following: in-network and out-of-network member coinsurance, deductibles and out-of-pocket maximums; emergency room, PCP office visit, and specialist office visit copayments; routine lab; out-of-network fee schedule; pharmacy out-of-pocket maximum, generic copayments, brand copayments and mandatory generic; formulary; and chiropractic, physical therapy, and acupuncture. N.J.S.A. 18A:16-13.2 does not require that the Board offer the “identical” plan, and it limits “the equivalent of” to “as that plan is described in N.J.S.A. 52:14-17.46.13—which description does not reference dependent age.

In view of the foregoing, I **CONCLUDE** that N.J.A.C. 17:9-3.1 is not a part of the plan design and that petitioners’ argument that the Board failed to offer an equivalent plan is not supported by the applicable statute and further **CONCLUDE** that the petition should be dismissed.

ORDER

It is **ORDERED** that the respondent’s cross-motion is **GRANTED**, participant’s cross-motion is **GRANTED**, and petitioners’ cross-motion is **DENIED**, and further ordered that the Petition is **DISMISSED**.

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.

February 29, 2024



DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:

db