

127-25

OAL Dkt. Nos. EDU 04777-24 and EDU 05265-24 (Consolidated)

Agency Dkt. Nos. 74-3/24 and 98-4/24

New Jersey Commissioner of Education

Final Decision

Board of Trustees of the College Achieve Greater
Asbury Park Charter School, Monmouth County,

Petitioner,

v.

Board of Education of the City of Asbury Park,
Monmouth County,

Respondent.

AND

Board of Education of the City of Asbury Park,
Monmouth County,

Petitioner,

v.

Board of Trustees of the College Achieve Greater
Asbury Park Charter School, Monmouth County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the College Achieve Greater Asbury Park Charter School Board of Trustees (College Achieve) pursuant to *N.J.A.C. 1:1-18.4*, and the reply thereto by the Asbury Park Board of Education (District), have been reviewed and considered.

In the spring of 2023, the District established new procedures requiring certain students to produce specific documentation to prove their residency in Asbury Park; of relevance to this matter, the requirements applied to incoming and current charter school students, including students who attend College Achieve. The District alleges that it was unable to verify the residences of many College Achieve students, and rejected others. The District filed a petition, seeking a hearing to revise the number of College Achieve students for whom the District is held financially responsible by the New Jersey Department of Education (NJDOE) and a recalculation of the total College Achieve tuition payments for which the District should be held responsible. Asbury Park also filed a petition, seeking immediate payment from the District in accordance with the payment schedule set by the NJDOE.

The Commissioner granted College Achieve's motion for emergent relief, concurring with the ALJ's Order that the District continue to remit all payments due to College Achieve according to the schedule set by the NJDOE. *Bd. of Trustees of the College Achieve Greater Asbury Park Charter Sch., Monmouth Cnty. v. Bd. of Educ. of the City of Asbury Park, Monmouth Cnty.*, Initial Decision, OAL Dkt. No. 08675-24 (July 16, 2024), *adopted*, Commissioner Decision No. 300-24E (Aug. 6, 2024). The matters were consolidated, and the parties filed cross-motions for summary decision.

In the Initial Decision, the Administrative Law Judge (ALJ) reiterated the conclusion reached during the proceedings on emergent relief that the District's obligation to remit payments to College Achieve each month is mandatory, and the District has no leeway to depart from the schedule. As to the District's request for a determination on the number of College Achieve students for which the District should be financially responsible, the ALJ found that *N.J.A.C.* 6A:22-4.2 and -4.3 do not specifically address the residency requirements and expectations among a local board of education, a charter school, and charter school parents and students. Accordingly, the ALJ concluded that it was appropriate to resolve the issues between the parties using equitable principles. The ALJ directed

College Achieve to provide the NJDOE with a list of all students listing an Asbury Park address in their records. The ALJ also directed the NJDOE to contact all of their parents and advise them of their need to prove that they reside in Asbury Park, and to arrange for a two-week period, including nights and one weekend day, for College Achieve parents to appear and provide the necessary residency information. For any students whose residency could not be verified through that process, the ALJ ordered that College Achieve reimburse the District for one half of the money the District paid to College Achieve to educate that student. Finally, the ALJ also denied College Achieve's request for an order that the State Treasurer pay College Achieve directly moving forward, rather than the District paying College Achieve. Accordingly, the ALJ granted the District's motion for summary decision in part and denied it in part, and denied College Achieve's motion for summary decision.

In its exceptions, College Achieve argues that the ALJ made factual findings that were disputed and/or not supported by the evidentiary record. College Achieve notes that the District did not update residency counts, residency records of students, or the identities of students whose residencies are in dispute, and asserted "facts" that were actually self-serving conclusions. According to College Achieve, the ALJ erroneously found that no regulation addresses the issues in dispute, because *N.J.A.C. 6A:22-2.1(c)* provides that districts' policies for determining a student's residency must be applied consistently for all students, including students who attend charter schools. College Achieve also argues that the residency dispute processes established at *N.J.A.C. 6A:22* are not limited to traditional school districts and instead apply to all students between five and 20 years of age, such that any family whose residency is disputed is entitled to written notice of a challenge by the District, a hearing, and an appeal to the Commissioner. College Achieve emphasizes that as of October 15, 2024, only one student was challenged by the District.

College Achieve also contends that the ALJ provides no legal authority to support her directive to the NJDOE – which is not a party to this matter – to engage in a residency verification process that the ALJ alone created. College Achieve takes exception to the order that it reimburse the District for half of the money paid for any students whose residency was not verified, when the Charter School Program Act makes no provision for the summary forfeiture of funds. College Achieve also notes that the return of funds to the District would result in a windfall for it, tied to students the District did not educate. Finally, College Achieve argues that sanctions against the District are necessary to prevent the District from continuing to withhold funding, and that same are authorized by *N.J.A.C. 6A:23A-15.3(g)(6)*.

In response, the District argues that its efforts to verify students' residences are intended to fulfill its fiduciary duties to the resident taxpayers of Asbury Park. According to the District, any factual disputes surrounding the past residency verification efforts are outside the scope of summary proceedings, and the ALJ properly refused to credit the factual assertions of either party. The District contends that the residency regulations do not account for instances in which student residences change after the initial registration process and that it was appropriate for the ALJ to decide the matter based on equitable principles and to establish a procedure to address that issue. The District argues that it has not infringed on the procedural rights of any families and, even if there was a basis for that allegation, College Achieve lacks standing to assert it. According to the District, all of College Achieve's arguments related to its entitlement to funding are predicated on the overarching requirement that funding only be provided for resident students.

Upon review, the Commissioner concurs with the ALJ that the plain language of *N.J.A.C. 6A:23A-15.3(g)* requires the District to remit payments to College Achieve each month, and payment cannot be conditioned on the verification of residency status. As the ALJ noted, the use of the term

“shall” regarding the District’s obligation to process payments demonstrates that it is mandatory, not optional. *See Quereshi v. Cintas Corp.*, 413 N.J. Super. 492, 498 (App. Div. 2010).

However, the Commissioner disagrees with the process established by the ALJ for conducting residency verifications of College Achieve students. N.J.A.C. 6A:22-1.1 provides that the rules in the Student Residency chapter apply to students between five and 20 years of age; there is no restriction that omits charter school students from the chapter’s provisions. Furthermore, each board of education is required to adopt written policies and procedures incorporating the chapter’s requirements, and to apply those policies “consistently for all of its students, including students who attend charter schools.” N.J.A.C. 6A:22-2.1(c).

Given the existence of these rules, the Commissioner rejects the ALJ’s conclusion that there is no legal authority addressing a situation in which a district questions the residency of a charter school student. The process for a district to challenge a student’s residency is laid out in the Student Residency chapter, N.J.A.C. 6A:22, which should also be reflected in the district’s policies and procedures, and it applies both to students enrolled in the district’s schools and to students enrolled in a charter school. Contrary to the District’s assertion, the process also applies both upon initial application and after the student is registered, thereby accounting for any changes in residency following enrollment. The residency process of N.J.A.C. 6A:22 and the appeal process detailed in N.J.A.C. 6A:3 allow the parties with pertinent information – the parents or guardians who allege they reside in the district, and the district who has conducted a residency review or investigation that may demonstrate otherwise – to appear before an ALJ and the Commissioner for a determination that can be based on all the facts relevant to the student’s residency.

Should the District wish to challenge the residency of any student attending College Achieve who the District believes does not reside in Asbury Park, it may avail itself of the procedures laid out

in *N.J.A.C. 6A:22*. The NJDOE's role is to process any appeal filed by a parent or guardian of a student whose residency is challenged, and for the Commissioner to issue a final agency decision based on the record developed at the OAL, determining whether the student is entitled to attend school in the district, including attending a charter school to which the district makes payments. The residency process envisioned by the ALJ is not supported by the law, and the Commissioner therefore rejects it.

Additionally, if a student is determined to be ineligible to attend school because they are not a resident of the district, the existing residency process properly places financial responsibility on the party who has enrolled the student, or kept the student enrolled, despite not being a resident – the parents or guardians of the student. *See N.J.S.A. 18A:38-1b* (requiring the Commissioner to assess tuition for the time of ineligible attendance when the evidence does not support the claim of the resident). There is no basis in the law for the ALJ's direction that College Achieve refund the District for 50% of the payment received for any student found not to reside in Asbury Park and, therefore, the Commissioner rejects same.

Finally, while *N.J.A.C. 6A:23A-15.3(g)(6)* affords a charter school board of trustees the opportunity to petition the Commissioner to have the amounts owed to the charter school deducted from the district's State aid and paid directly to the charter school, that provision does not make such a remedy mandatory or automatic. Given that this case has now concluded and the District is being given clear direction herein to continue making payments based on the schedule set by the NJDOE without regard to residency verifications, the Commissioner expects that the District will refrain from withholding, or threatening to withhold, payments in the future. Should the District fail to make future payments, College Achieve is free to file a new petition. The Commissioner also expects both parties to comply with the process to verify student enrollment information. In addition to the

required submissions for determining State aid in accordance with N.J.A.C. 6A:23A-15.3(g)(4) and (5), College Achieve shall cooperate with any requests by the District to revalidate residency eligibility pursuant to *N.J.A.C. 6A:22-4.3(a)*.

Accordingly, the Initial Decision is adopted in part. The District is ordered to continue making payments to College Achieve on the schedule set by the NJDOE, without regard to residency verifications. The Initial Decision is also adopted insofar as College Achieve's request for sanctions against the District is denied. The remainder of the Initial Decision is rejected. Should the District believe that any students attending College Achieve and claiming Asbury Park as their residence are not actually residents of Asbury Park, the District may issue notices of ineligibility to those students and pursue disenrollment and tuition reimbursement pursuant to all the requirements of *N.J.A.C. 6A:22*. College Achieve shall not be required to reimburse the District for any funds received from Asbury Park for students who are later determined not to be Asbury Park residents.

IT IS SO ORDERED.¹



COMMISSIONER OF EDUCATION

Date of Decision: April 14, 2025
Date of Mailing: April 16, 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

(CONSOLIDATED)

**BOARD OF TRUSTEES OF THE COLLEGE
ACHIEVE GREATER ASBURY PARK
CHARTER SCHOOL, MONMOUTH COUNTY,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
ASBURY PARK, MONMOUTH COUNTY,**

Respondent.

OAL DKT. NO. EDU 04777-24

AGENCY DKT. NO. 98-4/24

**BOARD OF EDUCATION OF THE CITY OF
ASBURY PARK, MONMOUTH COUNTY,**

Petitioner,

v.

**BOARD OF TRUSTEES OF THE COLLEGE
ACHIEVE GREATER ASBURY PARK
CHARTER SCHOOL, MONMOUTH COUNTY,**

Respondent.

OAL DKT. NO. EDU 05265-24

AGENCY DKT. NO. 74-3/24

Thomas O. Johnston, Esq., for petitioner-respondent Board of Trustees of the
College Achieve Greater Asbury Park Charter School (Johnston Law Firm,
LLC, attorneys)

Eric L. Harrison, Esq., for respondent-petitioner Board of Education of the City of Asbury Park (Methfessel & Werbel, P.C., attorneys)

Record Closed: December 4, 2024

Decided: January 21, 2025¹

BEFORE **KIMBERLEY M. WILSON**, ALJ:

STATEMENT OF THE CASE

Petitioner-respondent Board of Trustees of the College Achieve Greater Asbury Park Charter School (Charter School), a public charter school operating under the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 to -18, and respondent-petitioner Board of Education of the City of Asbury Park (Board or District), a local board of education that is in financial distress and has a fiscal monitor, have filed competing petitions with the Commissioner of the Department of Education (DOE) regarding what amount of money the Board owes the Charter School for educating Asbury Park students. The Board argues that for the 2023–2024 and 2024–2025 school years it has paid the Charter School to educate students who are either not Asbury Park residents or have not confirmed that they reside in Asbury Park. On the other hand, the Charter School contends that the District has failed to remit payment in a timely manner. The crux of the parties' dispute is public funds.

The Charter School and the District have filed cross-motions for summary decision.

PROCEDURAL HISTORY

On or around March 18, 2024, the Board filed a petition with the DOE, requesting a hearing to determine the number of Charter School students for which the Board was financially responsible, along with a recalculation of the Board's tuition payments to the

¹ The 45-day period to rule on the motions expires on Saturday, January 18, 2025. The next business day is Tuesday, January 21, 2025.

Charter School. The Commissioner of the DOE transmitted this matter to the Office of Administrative Law (OAL) where it was filed as a contested case on April 17, 2024. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On or around March 20, 2024, the Charter School filed a petition with the Commissioner of the DOE, requesting the Commissioner to direct the State Treasurer to remit payments that the District owed the Charter School to it and deduct those amounts from the District's State aid. The Commissioner of the DOE transmitted this matter to the OAL, where it was filed as a contested case on April 15, 2024. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On or around April 12, 2024, the Charter School filed its first motion for emergent relief, letter brief, and certifications with exhibits (first motion) with the Commissioner of the DOE, Office of Controversies and Disputes, seeking an order directing the Board to remit payment to the Charter School immediately pursuant to the DOE's payment schedule. On or around April 15, 2024, the DOE transmitted the first motion to the OAL as a contested case seeking emergent relief.

Oral argument on the first motion for emergent relief was held on April 18, 2024. On April 19, 2024, counsel for the Charter School advised that on or around April 18, 2024, the Board had remitted payment to the Charter School for the funds the Board owed the Charter School. Pursuant to an Order Denying Emergent Relief dated April 19, 2024, the first motion was dismissed as moot.

On or around June 20, 2024, the Charter School filed a second motion for emergent relief, again seeking an order directing the Board to remit payment to the Charter School immediately pursuant to the DOE payment schedule (second motion). On or around June 26, 2024, the DOE transmitted the second motion to the OAL as a contested case seeking emergent relief. On June 28, 2024, the OAL scheduled oral

argument on the second motion for July 15, 2024, and oral argument was held on July 15, 2024.²

Pursuant to an Initial Decision Granting Emergent Relief dated July 16, 2024, the Board was ordered to remit all payments due to the Charter School in the amounts and by the dates set forth on the District Payment Schedule dated June 28, 2024, as may be amended. This initial decision was affirmed by the Commissioner on August 6, 2024.

On June 16, 2024, the Board filed a motion to consolidate the two petitions. With consent from the Charter School, on July 31, 2024, an Order of Consolidation was entered.

A status conference was held on August 27, 2024, at which time the parties discussed their desire to file cross-motions for summary decision. Pursuant to a Letter Order dated August 29, 2024, the initial motions for summary decision were due on October 15, 2024, and were received. The Charter School and the Board filed opposition briefs by November 8, 2024. Neither the Charter School nor the Board filed a reply brief. Oral argument on the cross-motions for summary decision was held on December 4, 2024, via Zoom.

FACTUAL DISCUSSION

Because a portion of this matter has already been before me and decided, I take judicial notice³ of the following facts set forth in the Initial Decision Granting Emergent Relief dated July 16, 2024, as well as the ultimate determination in that motion:

1. Pursuant to a DOE Division of Finance and Business Services Office of School Finance FY 2023–24 District Payment Schedule dated December 20, 2023, the Board was scheduled to make the following payments to the

² July 15, 2024, was the first date that the ALJ had available on her calendar after the second motion was filed to address both oral argument and the disposition of the second motion.

³ Pursuant to N.J.A.C. 1:15-2(a), “official notice may be taken of judicially noticeable facts” as allowed in N.J.R.E. 201. N.J.R.E. 201 allows judges the discretion to take judicial notice of decisional law of all states in the United States, along with determinations made by government agencies.

Charter School based on the Charter School's October 15, 2023, enrollment:

<u>Scheduled payment date</u>	<u>Payment amount</u>
July 15, 2023	\$208,813
August 15, 2023	\$208,813
September 8, 2023	\$169,796
September 15, 2023	\$208,813
September 22, 2023	\$169,796
October 8, 2023	\$169,796
October 15, 2023	\$208,813
October 22, 2023	\$169,796
November 8, 2023	\$169,796
November 15, 2023	\$208,813
November 22, 2023	\$169,796
December 8, 2023	\$169,796
December 15, 2023	\$208,813
December 22, 2023	\$169,796
January 8, 2024	\$136,973
January 15, 2024	\$159,272
January 22, 2024	\$136,973
February 8, 2024	\$136,973
February 15, 2024	\$159,272
February 22, 2024	\$136,973
March 8, 2024	\$136,973
March 15, 2024	\$159,272
March 22, 2024	\$136,973
April 8, 2024	\$136,973
April 15, 2024	\$159,272
April 22, 2024	\$136,973
May 8, 2024	\$136,973
May 15, 2024	\$159,272
May 22, 2024	\$136,973

June 8, 2024	\$136,973
June 15, 2024	\$159,272
June 22, 2024	\$136,971

2. As of June 20, 2024, the Board failed to submit payment to the Charter School beginning with the May 2024 payments. The Board owed the Charter School \$751,247. If the Board did not submit payment to the Charter School by June 30, 2024, the Charter School would end its school year with a deficit of \$273,509 and would not have funds to satisfy its financial obligations.
3. As discussed in a letter dated June 28, 2024, from David Shafter (Shafter), State Monitor for the District, to Kenneth E. Saunders, President of the Board, Shafter overrode the Board's failure to approve payments to the Charter School at its April 25, 2024, meeting and directed the District to pay the Charter School \$709,772.
4. Pursuant to an email from Shafter dated July 12, 2024, to counsel for the Board, Shafter indicated that the District paid the Charter School the total amount due for the 2023–2024 school year.
5. Pursuant to the Initial Decision Granting Emergent Relief, the Board was ordered to remit all payments due to the Charter School in the amounts and by the dates set forth on the 2024–2025 District Payment Schedule dated June 28, 2024. I also requested that the “DOE intercede and assist the parties with the Charter School students’ residency issue so that the Board can receive the necessary assurances that the payments it will be remitting to the Charter School are a more accurate reflection of Asbury Park domiciled students who are attending the Charter School.”

Based the parties’ submissions regarding the cross-motions for summary decision, I **FIND** the following additional **FACTS**:

In spring 2023, the District noted that it had not formally and accurately implemented proper and current residency verifications for several years. Gerbino Cert. ¶ 6. The District established new procedures for all District students to follow, requiring them to produce specific documentation to prove their Asbury Park residence (residency procedure). Ibid. The residency procedure was given and applied to the following students: (i) new, incoming Asbury Park students; (ii) new and returning preschool students; (iii) out-of-district students for which the District paid tuition; (iv) incoming charter school students; (v) current charter school students; and (vi) charter school students who wished to participate in District sports programs. Id. at ¶ 6.

On or around August 15, 2023, the District emailed letters to the charter schools in the District, including the Charter School, directing them to have their respective students' parents go to central registration at the District's Dorothy L. McNish Parent Center (parent center) to verify their residency by September 29, 2023. Id. at ¶ 7, Ex. D. The September 29, 2023, deadline allowed the Commissioner to confirm the final charter school student enrollment for the 2023–2024⁴ school year by September 30, 2023, a statutory deadline, and have an accurate student count recorded on October 15, 2023, which is the basis for the Application for State School Aid for the 2023–2024⁵ school year. Id. at ¶ 7. As of October 3, 2023, 280 Charter School students did not verify that they were Asbury Park residents, out of a total enrollment of 338 students. Id. at ¶ 12. As of October 12, 2023, the number of Charter School students who had not verified that they were Asbury Park residents decreased to 277. Id. at ¶ 14.

Meanwhile, on October 7, 2023, the Charter School sent a letter to the District requesting an agreement that the “District would not ‘disapprove’ Charter School students’ residencies in the October 15 counts without affording families due process of law. Please do so. The Charter School stands ready to assist with residency re-verification, but it requires assurances that students, parents and its due process rights will be followed. Thank you.” Id. at ¶ 13.

⁴ The Certification of Mark Gerbino indicates that final charter school enrollment was for the 2022–2023 school year, which appears to be a typographic error.

⁵ The Certification of Mark Gerbino indicates that the Application for State School Aid was for the 2024–2025 school year, which appears to be a typographic error.

On or around the week of October 23, 2023, the Charter School sent envelopes of residency verification information to the District, rather than asking parents and guardians to go to the parent center to submit their residency information. Id. at ¶ 15.

Pursuant to a November 20, 2023, email from Dr. Melissa Simmons, District interim business administrator and board secretary, on October 26, 2023, the District received ten envelopes of residency verification information from the Charter School. Id. at ¶ 20, Ex. M. From the 340 student residency verification records the District received, only thirty-five of the students were deemed Asbury Park residents. Ibid. Based on this information, the Board asserted that the Charter School owed it \$1,429,225.59. Ibid.

The District's Charter School State Aid for 2023–2024 noted a pre-October 15 enrollment of 295.5 students at the Charter School, with re-verified enrollment for 284 students. Id. at ¶ 37. The Board noted that it had received the 340 student residency verification records and that 250 of those files remained unverified. Ibid. For the 2024–2025 school year, the Charter School's enrollment was 284 students. Ibid.

The estimated enrollments for the 2023–2024 and 2024–2025 school year included eighty-eight students verified to be Asbury Park residents. Id. at ¶ 38.

On September 30, 2024, the District provided the Charter School with its list of Charter School students, totaling 290 students. Denard Cert. at ¶ 5, Ex. A. From those 290 students, forty-eight students were marked “accepted” and sixty were marked “rejected.” Ibid.

LEGAL ANALYSIS AND CONCLUSIONS

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. What constitutes a genuine issue of fact is discussed in R. 4:46-2(c), which states, in relevant part:

An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

Counsel for the parties have advised that there are no material facts in dispute that would necessitate a hearing.⁶ Accordingly, the case is ripe for summary decision.

Legal Discussion

From my review of the motion papers, opposition papers, and oral argument, along with my consideration of the second motion, there are two principles that are abundantly clear here. First, there is no statute, regulation, or rule that clearly dictates the appropriate outcome between the competing interests. The Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 to -18, does not address these issues, nor do the accompanying regulations found at N.J.A.C. 6A:11-1.1 to -6.4. The process for determining whether a student is ineligible to attend a school district is addressed in N.J.A.C. 6A:22-4.2 and N.J.A.C. 6A:22-4.3, which includes the student’s right to appeal and to continue attending school while the appeal is pending, but neither of these regulations specifically addresses what happens when a charter school is the school in question, setting forth the

⁶ In the Charter School’s opposition to the Board’s motion for summary decision, the Charter School appears to dispute the number of Charter School students whose Asbury Park residency was unconfirmed. For the reasons discussed herein, this dispute is not a genuine fact that would require a hearing.

requirements and expectations among a local board of education, a charter school, a charter school parent, and a charter school student.

N.J.S.A. 18A:38-1(b)(2) discusses a superintendent or principal's option to apply to the board of education to have a student removed from the district if the student's parent or guardian is not domiciled within the district. Again, this statute does not address charter schools and what happens when a charter school student is not domiciled within the school district.

For this lack of legal authority, equitable principles will be used to resolve these issues. See Hackensack v. Winner, 82 N.J. 1, 30 (1980) (stating "[t]he utilization of court-made procedural tools in administrative proceedings must depend in the final analysis upon the nature of the agency's regulatory responsibilities towards the subject matter of the controversy as well as towards the particular parties appearing before it.")

Second, it is abundantly clear that neither party has clean hands in this situation. The doctrine of clean hands expresses the "equitable principle that a court should not grant relief to one who is a wrongdoer with respect to the subject matter in suit." Faustin v. Lewis, 85 N.J. 507, 511 (1981); see also Rank v. Trenton Water Works, 97 N.J.A.R.2d (BRC) 1, 15 (stating "[w]hen a petitioner asks a tribunal for equitable relief, he must be free of wrongdoing toward the respondent with regard to the transaction for which he seeks relief").

The District failed to require yearly residency verifications for Charter School students for a period of time, giving rise to this situation, and for those students that the District believed did not reside in Asbury Park, the District did not begin the process to challenge their residency, pursuant to N.J.A.C. 6A:22-4.2. The District generally alleged that it did not have sufficient funds to begin investigations regarding over 200 students; it did, however, fail to take any action. Finally, the District failed to remit timely payment to the Charter School for money the District owed to the Charter School during the 2023–2024 school year.

On the other hand, the Charter School has benefited from the Board's failure to require yearly residency verifications from its students, potentially receiving public funding to educate students who do not actually reside in Asbury Park. There was at least one instance where the Charter School provided student residency verification information to the District unilaterally, rather than following the District's instruction requiring that the student's parents go to the District's parent center to provide that verification information.

None of the Charter School students' ability to receive a public education, a right specified in the New Jersey Constitution, was affected, meaning that there is no evidence that any Charter School students were dismissed from the Charter School for failing to provide residency verifications. The public, however, has a right to understand that its money, its tax dollars, are being spent and allocated properly. This right underlies this decision.

The District's motion for summary decision

In its motion for summary decision, the District "seeks an Order conditioning [payment] on the verification of residency status." Resp't's Br. at 2. The District also seeks a process by which the Board can be certain that the appropriate district of residence bears the financial burden of a student attending the Charter School. Resp't's Br. at 15.

The only regulation providing guidance here is N.J.A.C. 6A:23A-15.3(g), which states:

A district board of education shall process payment(s) and payment adjustments to a charter school during the school year as follows:

1. The district of residence and non-resident school district(s) shall initiate payments to the charter school based on projected enrollment, as set forth in this section.
2. The school district of residence and non-resident school district(s) shall pay directly to a charter

school the local share per pupil at the charter school rate, pursuant to N.J.S.A. 18A:36A-12b, in 12 equal installments starting July 15 and thereafter on the 15th of each month.

[Emphasis added.]

The plain language of this regulation provides no leeway for the Board to depart from its payments to the Charter School. The Board is required to make payments to the Charter School on the fifteenth day of each month beginning in July, a mandatory, rather than optional, obligation. See Quereshi v. Cintas Corp., 413 N.J. Super. 492, 498 (App. Div. 2010) (stating, “[t]he use of the word ‘shall’ ordinarily denotes action that is mandatory, unless the context suggests otherwise.”); see also A.B. v. Div. of Med. Assistance & Health Servs., 407 N.J. Super. 330, 340 (App. Div. 2009) (stating, “[a] rule of an administrative agency is subject to the same canons of construction as a statute.”). For this reason alone, the relief that the Board seeks, namely, conditioning payment on the verification of residency, cannot be granted.

The Board also seeks a determination on the number of Charter School students for which the District should be financially responsible. The Charter School argues that residency is established when the student seeks to enroll in a charter school as part of the transfer process. Pet’r’s Br. at 6. The Charter School fails to acknowledge that the transfer process occurs once, and provided that a student attends a charter school for multiple years, it does not mean that the student’s residence may not have changed during that time.

Understanding the importance of ensuring that public funds are spent and allocated properly, there is public interest and merit to resolving this portion of the dispute. While the parties bicker over how many Charter School students had their Asbury Park residency verified, it is clear that relief is appropriate on this issue.

The equities here weigh heavily in favor of the public, understanding that none of the Charter School students’ right to receive a public education has been affected. At issue here are two school years, namely, 2023–2024 and 2024–2025. We are in the

midst of the 2024–2025 school year. Accordingly, I am directing the parties to address the residency of all Charter School students believed to reside in Asbury Park in the manner as follows:

1. 2023–2024 school year

Because the Board has already remitted full payment to the Charter School for funds due the Charter School for the 2023–2024 school year, this process is designed to confirm a student's enrollment for that school year.

The Charter School shall provide the DOE with a list of all Charter School students listing an Asbury Park residence in their student file and/or student record as of the beginning of the academic year. The DOE will contact all of these students' parents in writing in English, Spanish, and any other language in which the student and/or parent communicates and advise them of their need to prove that they resided in Asbury Park as of October 15, 2023, and June 15, 2024. The DOE will arrange for a two-week period, including nights and one weekend day, that Charter School parents can appear, preferably at a site other than one owned or operated by the District or the Charter School, to provide the necessary residency information (residency verification process). No past or current District or Charter School employees, representatives, board members, agents, or independent contractors will be involved in the residency verification process. The DOE will be responsible for ensuring that there are no conflicts of interest for its employees involved in the residency verification process.

For those Charter School students whose Asbury Park residency was not verified during the residency verification process, the Charter School shall reimburse the District for one-half of the money the Board paid to the Charter School to educate that student or agree to the appropriate reduction of the funds that the Board will owe the Charter School for the 2024–2025 school year.

2. 2024–2025 school year

We are presently in the 2024–2025 school year, and I have already ordered the District to remit all payments due to the Charter School in the amounts and by the dates discussed on the June 28, 2024, 2024–2025 District Payment Schedule. To ensure again that the Board is providing funding only for Charter School students who reside in Asbury Park, the Charter School shall provide the DOE with a list of all students who list an Asbury Park residence in their student file and/or student record. The DOE will contact all of these students' parents in writing in English, Spanish, and any other language in which the student and/or parent communicates and advise them of their need to prove that they resided in Asbury Park as of October 15, 2024. The DOE will engage in the residency verification process for the 2024–2025 school year, and no past or present District or Charter School employees, representatives, board members, agents, or independent contractors will be involved in the residency verification process. The DOE will be responsible for ensuring that there are no conflicts of interest for its employees involved in the residency verification process.

For those Charter School students whose Asbury Park residency was not verified during the residency verification process, the Board may take the appropriate action pursuant to N.J.A.C. 6A:22-4.2 and N.J.A.C. 6A:22-4.3 to challenge the student's residency.

I am again requesting DOE action, namely, that it consider and enact appropriate regulations to address this situation so that it does not arise again between these parties for the 2025–2026 school year or for any other board of education and charter school in New Jersey.

Based on the foregoing, the Board's motion for summary decision is **DENIED** in part, namely, the request to condition payment to the Charter School on residency verification, and **GRANTED** in part, namely, the request for a process to ensure that a student's district of residence pays for that student's education. The residency verification process should proceed as set forth herein.

The Charter School's motion for summary decision

The Charter School seeks the entry of sanctions against the Board pursuant to N.J.A.C. 6A:25A-15.3(g), requesting that the State Treasurer pay the Charter School directly, rather than the Board pay the Charter School under the applicable District Payment Schedule. The Charter School cites to the Board's past failures to pay the Charter School as support for sanctions against the Board.

As noted previously, there is no applicable law or regulation that addresses the overarching circumstances here. While I do not condone the Board's actions in failing to pay the Charter School in a timely fashion, it does appear that its concerns about paying to educate students who may not reside in Asbury Park were not directly addressed by the parties involved so that withholding payment was not an option.

The equities here do not fall in favor of the Charter School. The District paid the Charter School all amounts it was due for the 2023–2024 school year, and the Charter School has not argued in this motion that the District has failed to pay the Charter School for amounts due during the 2024–2025 school year. There is no present violation of the Initial Decision Granting Emergent Relief dated July 16, 2024, and, therefore, no reason to levy a sanction against the Board.

For these reasons, the Charter School's motion for summary decision is **DENIED**.

ORDER

Accordingly, the Board's motion for summary decision is **DENIED** in part and **GRANTED** in part. The residency verification process should proceed as set forth herein. The Charter School's appeal is dismissed, and its motion for summary decision is **DENIED**.

I respectfully request DOE action, which should include considering and enacting appropriate regulations to address this situation so that it does not arise again between

the parties for the 2025–2026 school year or for any other board of education and charter school in New Jersey.

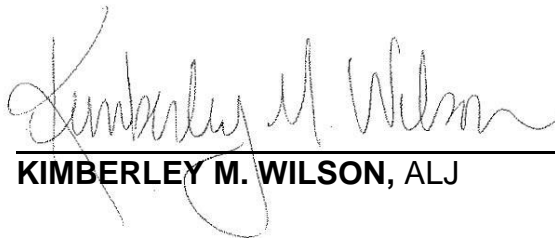
I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING 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.

January 21, 2025

DATE



KIMBERLEY M. WILSON, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMW/am

APPENDIX

Witnesses

For petitioner-respondent:

None

For respondent-petitioner:

None

Exhibits

For petitioner-respondent:

- Notice of Motion for Summary Decision; Letter Brief; Petition to Commissioner dated March 20, 2024, with exhibits; Certification of Thomas O. Johnston dated April 11, 2024, with exhibits; Certification of Nicholas Puleio dated April 11, 2024, with exhibits; Notice of Motion for Emergent Relief and Certification of Thomas O. Johnston, with exhibits, dated June 20, 2024; Supplemental Certification of Nicholas Puleio dated June 20, 2024; Certification of Micah Bender dated July 15, 2024, with exhibits; Certification of Thomas O. Johnston dated October 14, 2024, with exhibits; Certification of Jasonn Denard dated October 14, 2024, with exhibits; proposed Form of Order
- Letter Brief and Supplemental Certification of Micah Bender dated November 8, 2024, with exhibits

For respondent-petitioner:

- Letter Brief dated October 15, 2024; Certification of Mark Gerbino dated April 15, 2024
- Letter Brief dated November 8, 2024