

EDU #665-99
C #287-00
SB # 53-00

BOARD OF EDUCATION OF THE WEST :
WINDSOR-PLAINSBORO REGIONAL :
SCHOOL DISTRICT, MERCER COUNTY, :

PETITIONER-RESPONDENT, :

V. :

BOARD OF EDUCATION OF THE :
TOWNSHIP OF DELRAN, BURLINGTON :
COUNTY, :

RESPONDENT-APPELLANT, :

AND :

STATE BOARD OF EDUCATION

BOARD OF EDUCATION OF THE :
TOWNSHIP OF NUTLEY, ESSEX COUNTY, :

DECISION

PETITIONER-RESPONDENT, :

V. :

BOARD OF EDUCATION OF THE :
TOWNSHIP OF DELRAN, BURLINGTON :
COUNTY, :

RESPONDENT-APPELLANT. :

Decided by the Commissioner of Education, September 5, 2000

For the Petitioner-Respondent Board of Education of the West Windsor-
Plainsboro Regional School District, Parker, McCay & Criscuolo, P.A.
(James F. Schwerin, Esq., of Counsel)

For the Petitioner-Respondent Board of Education of the Township of Nutley,
Genova, Burns & Vernoia (Elizabeth A. Daly, Esq. and J. Frank Vespa-
Papaleo, Esq., of Counsel)

For the Respondent-Appellant, John T. Barbour, Esq.

This appeal involves a single issue: Is the school district in which a group home is located responsible for the transportation costs related to out-of-district placements of classified children receiving special education services who are placed in the group home by the Division of Youth and Family Services (“DYFS”) or the Division of Developmental Disabilities (“DDD”)?

In her initial decision, Administrative Law Judge (“ALJ”) Kathleen Duncan concluded that the district in which the child’s parent or legal guardian is domiciled is responsible for the transportation costs related to the child’s educational placement and not the district in which the group home is located. Observing that the question of how to fund the free appropriate education required by the Individuals With Disabilities Act is a matter of State law, ALJ Duncan concluded that under the New Jersey Administrative Code and statute, transportation for classified students is part of the educational services required to be funded by the school district in which the parent or guardian is domiciled and for which that district may receive State aid pursuant to N.J.S.A. 18A:46-23 and N.J.S.A. 18A:7F-25. Based on her review of the entire statutory scheme related to the State Facilities Act of 1979, L.1979 c. 207,¹ ALJ Duncan found that there

¹ The State Facilities Act of 1979 (“Act”) is codified at N.J.S.A. 18A:7B-1 et seq. Enacted in the face of at least one lawsuit and questions as to whether some of the State facilities could meet the requirements of federal law mandating the provision of a free and appropriate education to all handicapped children, the purpose of the Act was to provide a thorough and efficient education for children in all State facilities. Senate Education Committee Statement accompanying Assembly, No. 86-L.1979, c. 207. When enacted, the Act applied to educational programs in State schools and day training centers for the mentally retarded, State psychiatric hospitals, State residential youth centers, and State correctional facilities.

By enactment of L.1979 c. 207, the Legislature at the same time amended N.J.S.A. 30:4C-26 to provide that:

whenever the Division of Youth and Family Services shall place any child...in any school district, the child shall be entitled to the educational benefits of such district; provided, however, that the district of residence, as determined by the Commissioner of Education pursuant to law, shall

was no statutory or regulatory reference that would place the financial burden for transporting classified children from their group homes to their out-of-district educational placements on the district in which the group home is located and that there was no logical reason for doing so.

In reaching her conclusion, the ALJ recognized that the Commissioner of Education had been provided with written legal advice bearing on the issue before her by a Deputy Attorney General (“DAG”) in 1984. The ALJ further recognized that the DAG had advised the Commissioner that since N.J.S.A. 18A:7B-4, which had been enacted as part of Chapter 207 of the Laws of 1979, permitted funds received by the Department of Human Services and the Department of Corrections to be used for child study team services but did not mention transportation costs, the word “tuition” as used in N.J.S.A. 30:4C-26, which imposed the costs of tuition for children placed in group homes by DYFS on the child’s district of residence, did not include transportation costs.² The ALJ, however, pointed out that although the Administrative Agency Advice (“AAA”) from the DAG acknowledged that N.J.S.A. 18A:7B-4 did not apply to the education of children in group homes, the AAA failed to recognize that because the children to whom that statute applied were, with one exception, residents of State facilities, transportation was not at issue. In this respect, the ALJ stressed that for those children to whom N.J.S.A. 18A:7B-4 applied but who attended day training centers, the costs of transportation had been specifically shifted by the Legislature by enactment of N.J.S.A.

be responsible for paying tuition for such child to the district in which he is placed. N.J.S.A. 30:4C-26(c).

The statutory question in this case is whether the word “tuition” in N.J.S.A. 30:4C-26(c) includes transportation costs for out-of-district placements.

² See supra, note 1.

18A:46-18.1 from the child's district of residence to the State Department of Human Services. Therefore, and based on her overall analysis of the statutory scheme, ALJ Duncan concluded that the more logical interpretation of the Legislature's silence as to transportation costs was that it had not intended to shift the financial responsibility for such costs from the district of residence to the district where the group home happened to be located.

Before the Commissioner arrived at his decision in the matter, the Director of the Bureau of Controversies and Disputes requested administrative agency advice on his behalf as to whether the AAA provided in 1984 remained valid. By memorandum issued on June 20, 2000, the Commissioner was advised by a Deputy Attorney General that the Administrative Agency Advice provided in 1984 remained valid. In reaching this conclusion, the DAG who authored the memorandum acknowledged that ALJ Duncan was correct in pointing out that several statutes bearing on the question of transportation costs had been changed since 1984. However, the DAG concluded that the 1984 Administrative Agency Advice remained valid because N.J.S.A. 30:4C-26, the statute that authorizes group home placements, had not been significantly altered since that time. Hence, in a decision based on the advice that had been provided to him, the Commissioner directed that Delran, the district in which the group home in this case was located, reimburse the petitioning districts, which were the districts of residence of two of the children who had been placed in the group home, for the transportation costs at issue and to continue funding those costs for a third child who was currently in the group home.

The Delran Board has appealed to the State Board of Education from the Commissioner's decision, and we have considered its arguments very carefully. In doing so, it has become increasingly clear to us that it is inequitable to continue to impose the costs at issue exclusively on those school districts in which group homes happen to be located. This is especially true given that the number of children placed in such homes today is far greater than in 1984 and that the transportation costs are considerable because the educational placements of these children may be quite distant from the group home. Moreover, we cannot ignore that in contrast to the funding system in place in 1984 and to which the DAG specifically pointed in her 1984 memorandum, school districts are no longer entitled to be reimbursed by State aid for 90% of the costs of transporting these children from the group homes to their educational placements. However, although the State Board of Education disagrees with the most recent written advice from the Attorney General's Office sustaining the continued validity of the AAA provided to the Commissioner in 1984, the State Board, like the Commissioner, is required to follow that advice. We are therefore compelled to affirm the decision of the Commissioner in this matter.

April 3, 2002

Date of mailing _____