



OLR RESEARCH REPORT

December 3, 2012

2012-R-0500

DECISION BARRING THE STATE FROM MANDATING SCHOOL DISTRICTS PAY TUITION FOR PRESCHOOL STUDENTS WHO ATTEND INTERDISTRICT MAGNET SCHOOLS

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You asked for a summary of the declaratory ruling that found that when a student attends an interdistrict magnet preschool program outside of his or her home school district (i.e., “sending” district) the state cannot require the sending district to pay tuition to the magnet school for that student.

SUMMARY

Since 2008, the state had required that when a student attends an interdistrict magnet preschool outside of the student’s home district, the district must pay tuition to the magnet school. There are a number of magnet schools that offer all-day preschool, and under state law parents can choose to directly enroll their children in these magnets. The state had been requiring the sending districts to pay tuition to the magnet schools even if the sending districts did not offer preschool as an option for their own preschool population.

Six school districts joined together to formally petition the State Board of Education (SBE) for a declaratory ruling on whether the education commissioner had improperly interpreted the interdistrict magnet school statutes when he required the sending districts to pay tuition. The SBE chose to appoint an impartial hearing officer to hear the case. Ann Bird, the hearing officer, issued a decision on August 6, 2012, that concluded the magnet school statute does not require sending districts to financially support students attending preschool programs outside of the district.

On September 5, the SBE unanimously adopted the declaratory ruling and authorized the commissioner to take necessary action. The SBE chairman said the state would pick up the tuition cost for the 2012-13 school year. He indicated the long-term solution was up to the General Assembly. The yearly tuition cost for preschool students to attend magnet schools outside their home districts is approximately \$4 to \$5 million a year.

(The petition submitted by the school districts had two parts. The second part concerned whether the statutes require sending districts to financially support students attending part-time K-12 magnet programs outside the district. The ruling affirmed that this was the requirement as long as the magnet programs are at least half time. But this report focuses on the preschool aspect of the decision.)

MAGNET SCHOOLS BACKGROUND

Under state law, “interdistrict magnet school programs” are designed to support racial, ethnic, and economic diversity and offer special and high quality curriculum ([CGS § 10-264l \(a\)](#)). (The law also requires students in the program to attend at least half-time, but that element has no bearing on the full-day preschool tuition issue.) The state has provided financial and program support for magnet schools since the legislature first created them in 1995.

Prior to 2007, the law required magnet school operators to enter into participation agreements with the school districts who agreed to send students from their district to the magnet. These agreements meant the magnet could count on participating districts to send students and pay tuition for the students as detailed in the agreements.

Parental Direct Enrollment and Tuition

In 2007, the legislature changed the magnet school statute to allow parents to directly enroll their child in a magnet school regardless of whether the sending district was included in a participation agreement. The law also mandated that the sending districts pay tuition for their students attending magnets in other districts.

The new law required the tuition equal 75% of the difference between the average per pupil expenditure of the magnet school for the prior fiscal year and the magnet school per-pupil state operating grant. If the sending district failed to pay the tuition, the education commissioner could withhold state education aid to the district, up to the amount of the unpaid tuition, and transfer it to the fiscal agent for the magnet school as a supplementary operating grant.

These changes opened up magnet schools to a much greater potential enrollment area, but it also removed the sending districts from having any control over what magnet schools their students could attend.

In 2008, the legislature enacted a new law ([PA 08-170](#)) to help address the *Sheff v. O'Neill* desegregation settlement. This included provisions to expand the magnet school program. Following this, the State Education Department (SDE) issued a memorandum/notice regarding *Sheff* informing school districts that any sending districts are responsible for paying tuition for preschool students attending magnet schools, regardless of whether the sending district provides preschool to its own regular education students.

PETITION FOR DECLARATORY RULING

On October 6, 2011, six school districts joined together to formally petition SDE for a declaratory ruling regarding whether sending districts are required to pay the tuition for resident students attending preschool magnet programs, especially where a school district does not provide preschool for its own students. The following districts submitted the petition: Regional School District No. 10, Ellington Board of Education, New Hartford Board of Education, Newington Board of Education, Regional School District No. 16, and Barkhamsted Board of Education.

The districts submitted per-student invoices for the 2011-2012 school year. The amounts are shown by school in Table 1.

Table 1: Per-Student 2011-2012 Tuition for Full-Day Magnet Preschools Named in Petition.

<i>Preschool</i>	<i>Grades</i>	<i>Tuition</i>
Reggio Magnet School for the Arts, Avon	Pre-K to 5	\$3,740
Montessori Magnet School, Hartford	Pre-K to 5	2,928
Museum Academy, Bloomfield	Pre-K to 5	3,740
International Magnet School for Global Citizenship, East Hartford	Pre-K to 5	3,740
University of Hartford Magnet School, West Hartford	Pre-K to 5	3,327
Discovery Academy, Hartford	Pre-K to 5	3,740
Medical Professions and Teachers Prep Academy, Windsor	Pre-K	3,740

On November 2, 2011, the SBE agreed to address the petition and chose to authorize the commissioner to appoint a hearing officer to conduct a formal hearing on the issue.

DECLARATORY RULING

The hearing officer, Ann Bird, issued her decision on August 6, 2012, in which she held sending districts are not required to pay tuition for preschool magnet school students. She based on the finding that under state law, school districts are not required to provide educational services for students under age five (preschool), with the exception of special education. That law requires each local or regional board of education to “furnish, by transportation or otherwise, school accommodations so that each child five years of age and over and under twenty-one years of age who is not a graduate of a high school or vocational school may attend public school. . .” ([CGS § 10-186\(a\)](#)).

Citing a 2006 Connecticut Supreme Court decision, she wrote: “It is well settled that school districts are not required to provide, and students are not entitled to receive, educational services before age five ([CGS § 10-186](#); *Board of Education of Town of Hamden v. State Board of Education*, 278 Conn j326 (2006)).

Since the state does not require districts to provide education for preschool age children, then it cannot require a district that chooses not to provide that service to pay for it if parents choose to send their child out of district.

In its response to the petition, SDE argued that preschool programs are a key recruitment tool for magnet schools. Once parents in a sending district choose to send a child to a magnet school they may continue the child into kindergarten and beyond if they are satisfied with the magnet school. The quality and availability of these programs encourage suburban parents to enroll their children in these magnet schools, an outcome that helps address the state's desegregation goals under the *Sheff* settlement.

Bird acknowledged this aspect of preschool programs as a recruitment tool, but held that it did not change the statutory facts of the situation.

She also responded to SDE's assertion that SBE has the implicit authority to impose the tuition requirement on the sending districts even if state law does not say all students are entitled to pre-K education. Bird ruled that the SBE does not have the inherent power to make law or impose requirements beyond those expressly stated in statute (*Pereira v. State Board of Education*, 304 Conn 1, 42-43 (2012)). Also, she found, more specifically, that the statutes provide no indication that the legislature intended for tuition rules to be different for preschool children attending magnet schools.

“If the General Assembly had intended to exempt interdistrict magnet school form the limitations of [Connecticut General Statutes Section 10-186\(a\)](#), it could and would have done so explicitly,” she wrote.

JM:ts