Connecticut State Board of Education

Hartford

To Be Proposed:
May 1, 2024

Resolved, that, in the matter of the Petition of the Brass City Charter School for a Declaratory Ruling, the State Board of Education take the following action pursuant to Section 4-176 of the Connecticut General Statutes (C.G.S.) and Sections 10-4-20 through 10-4-22 of the Regulations of Connecticut State Agencies Sections:

(1) Find that the legal rights, duties, or privileges of the Brass City Charter School, the Waterbury Board of Education, the Booker T. Washington Academy, and the New Haven Board of Education will be specifically affected by this Declaratory Ruling proceeding, and thereby confirm the granting of party status in this proceeding to the Brass City Charter School, the Waterbury Board of Education, the Booker T. Washington Academy, and the New Haven Board of Education pursuant to C.G.S. Section 4-176(d);

(2) Approve, adopt, and issue the Declaratory Ruling attached hereto on the two questions presented in the Brass City Petition on which the State Board agreed to issue such rulings at its meeting of September 6, 2024, which Declaratory Ruling shall be effective upon mailing thereof to the Brass City Charter School, the Waterbury Board of Education, the Booker T. Washington Academy, and the New Haven Board of Education pursuant to C.G.S. Section 4-176(h);

(3) Authorize the Chairperson to sign the Declaratory Ruling on behalf of the State Board; and

(4) Direct the Commissioner to take the necessary action to implement this Resolution.

Approved by a vote of ___ this first day of May, Two Thousand Twenty-four.

Signed: _____

Charlene M. Russell-Tucker, Secretary
State Board of Education

Connecticut State Board of Education

Hartford

TO: State Board of Education

FROM: Charlene M. Russell-Tucker, Commissioner of Education

DATE: May 1, 2024

SUBJECT: Brass City Charter School Declaratory Ruling

Executive Summary

Introduction

The Brass City Charter School ["Brass City"], a state charter school, has filed a Petition for Declaratory Ruling ["Petition"] with the State Board of Education ["State Board"]. The Petition seeks declaratory rulings as to the interpretation and application of Connecticut General Statutes Section 10-66ee(d)(7), which allocates between a charter school and the school district in which a charter school student resides the programmatic and financial responsibility for the provision of special education services to such charter school student. More specifically, Brass City seeks a declaratory ruling that: 1) School districts are responsible for reimbursing the actual costs incurred by charter schools for providing such services; and 2) the actual cost of providing special education and related services not only includes the time spent on direct instruction, but also the time charter school personnel spend on administrative and planning activities directly related to the provision of special education and related services.

In response, the Waterbury Board of Education ["Waterbury Board" or "Waterbury"] has argued that Section 10-66ee(d)(7)'s use of the term "reasonable cost" limits reimbursable costs to those that the students' district of residence considers reasonable. The Waterbury Board has expressed concern that utilizing an actual-cost standard will result in unreasonable and excessive costs. Waterbury has also argued that its staff is responsible for the administrative and planning activities associated with the provision of special education and related services, and thus the charter school cannot claim reimbursement for any such costs.

The State Board has the legal authority to issue declaratory rulings. *See* C.G.S. §4-176; Regs. Conn. State Agencies §§10-4-20 through 10-4-22.

Background

On May 30, 2023, Brass City, a state charter school that is located in the City of Waterbury and is comprised of students who reside in Waterbury, filed a Petition for a Declaratory Ruling with the State Board. As noted, in the Petition, Brass City alleged a dispute with the Waterbury Board, a local board of education, concerning the payment by the Waterbury Board to Brass City for the costs of educating Waterbury students who attend Brass City and require special education. Brass City petitioned for a declaratory ruling regarding the interpretation and application of C.G.S. Section 10-66ee(d)(7), which allocates school district and charter school responsibility for determining, paying for, and delivering services to students who require special education.

Brass City requested that the State Board issue declaratory rulings on each of the five issues set forth in the Petition. The State Board was provided with a detailed summary of the Petition and a copy of the Petition and appendices prior to the State Board's September 6, 2023, meeting. The State Board was also presented with a recommendation that it agree to rule on two of the five issues presented in the Petition and decline to issue rulings on the remaining three issues. On September 6, 2023, the Board accepted the recommendation, agreed to issue rulings on two of five declaratory rulings requested by Brass City, and directed the Commissioner to take the necessary action. Subsequently, the Commissioner, acting through the CSDE's Division of Legal and Governmental Affairs, provided notice to school districts and charter schools that interested persons may petition for party or intervenor status in the Brass City declaratory ruling proceeding. Persons seeking party or intervenor status were advised to include, with their petitions, any data, facts, arguments, or opinions that they would like to have considered with respect to these issues. *See* R.C.S.A. §10-4-22 (a).

In response to this notice, Booker T. Washington Academy ["Booker T."] requested and was granted party status. As such, it joined Brass City in seeking declaratory relief. Similarly, the New Haven Board of Education ["New Haven Board"] requested and was granted party status. As such, it joined the Waterbury Board in opposing the granting of such declaratory relief. No other entities or individuals have sought party status. A scheduling conference was held among the parties and the CSDE's Division of Legal and Governmental Affairs, and a schedule for the submission of filings was agreed to. This schedule was subsequently modified by agreement of the parties and the CSDE. Brass City, the Waterbury Board, Booker T., and the New Haven Board all have filed briefs with legal and factual arguments in support of their respective positions. The factual and legal substance of these filings are discussed at length in the draft Declaratory Ruling, which is being provided to the State Board with this report.

With the submission of the proposed Declaratory Ruling, this matter is ready for the State Board's consideration and action at its May 1, 2024, meeting.

Recommendation

The CSDE has reviewed at length the above-referenced parties' respective filings as well as the applicable federal and state statutes, regulations, and case law. Based upon that review, the CSDE has set forth in the accompanying draft of the proposed Declaratory Ruling a detailed explication of the factual and legal issues pertaining to Brass City's Petition for Declaratory Ruling and the Waterbury Board's opposition thereto. In turn, and based upon that analysis and discussion, the CSDE has set forth proposed rulings on the two issues that the State Board agreed to consider at its meeting of September 6, 2023.

For the reasons set forth in the accompanying proposed Declaratory Ruling, the CSDE recommends that the State Board adopt and issue said Declaratory Ruling.

Prepared by:

Louis Todisco, Attorney
Division of Legal and Governmental Affairs

Approved by:

Michael P. McKeon, Director
Division of Legal and Governmental Affairs

Connecticut State Board of Education

In the Matter of Petition of the Brass City Charter School for a Declaratory Ruling	**:**	**Declaratory Ruling 23-01**
	:	**May 1, 2024**

DECLARATORY RULING

I. BACKGROUND AND PROCEDURAL HISTORY

On May 30, 2023, Brass City Charter School ("Brass City"), a state charter school in Waterbury, filed a Petition for a Declaratory Ruling ("Petition") with the State Board of Education ("State Board") pursuant to Section 4-176 of the Connecticut General Statutes ("C.G.S."). In the Petition, Brass City alleged a dispute with the Waterbury Board of Education ("Waterbury BOE"), a local board of education, concerning the payment by the Waterbury BOE to Brass City for the costs of educating Waterbury students who require special education and related services. The focus of the Petition was the interpretation and application of C.G.S. §10-66ee(d)(7).[1] This subsection allocates between school districts and charter schools their respective responsibilities for delivering and financing the provision of special education services to charter school students, providing as follows:

> In the case of a student identified as requiring special education, the school district in which the student resides shall: (A) Hold the planning and placement team meeting for such student and shall invite representatives from the charter school to participate in such meeting; and (B) pay the state charter school, on a quarterly basis, an amount equal to the difference between the reasonable cost of educating such student and the sum of the amount received by the state charter school for such student pursuant to subdivision (1) of this subsection and amounts received from other state, federal, local or private sources calculated on a per pupil basis. Such school district shall be eligible for reimbursement pursuant to section 10-76g. The charter school a student requiring special education attends shall be responsible for ensuring that such student receives the services mandated by the student's individualized education program whether such services are provided by the charter school or by the school district in which the student resides.

C.G.S. § 10-66ee(d)(7).

[1]This is current citation for Section 10-66ee(d)(7). Section 10-66ee was amended by Public Act 23-204, §343, effective July 1, 2023. Although the amendment did not change the text of this subsection, it did change the numbering.

In its May 30, 2023, Petition, Brass City requested that the State Board issue declaratory rulings on five separate issues, which are set forth in Appendix A attached hereto. The Connecticut State Department of Education ("CSDE") subsequently issued notice of the filing of the Petition to school districts and charter schools and posted it on the CSDE website. Interested persons were advised how to obtain a copy of the Petition. In response, the Waterbury BOE filed a Motion to Dismiss the Petition on July 24, 2023.

On September 6, 2023, the State Board voted to issue declaratory rulings on the following two issues while declining to address the remaining three issues contained in the Petition. The two issues on which the State Board agreed to issue declaratory rulings were as follows:

1. Does C.G.S. Section 10-66ee require a resident local or regional board of education ("Resident District") to reimburse a State Charter School for the actual cost of providing special education and related services based on the services and minutes enumerated in each resident student's Individualized Education Program ("IEP"), so long as the total amount of reimbursement requested by the State Charter School for all enrolled students with disabilities does not exceed the State Charter School's actual cost of providing special education and related services to all enrolled students?

2. Does the actual cost of providing special education and related services include the percentage of time charter school personnel spend on administrative and planning activities directly related to the provision of special education and related services to Resident Students, in addition to the time spent on direct instruction?

After the State Board voted to issue the declaratory rulings, notice was provided to school districts and charter schools that interested persons could petition for party or intervenor status in the declaratory ruling proceeding and that petitions for party or intervenor status would be reviewed in accordance with C.G.S. §4-176(d). Persons seeking party or intervenor status were advised to include, with their petitions, any data, facts, arguments, or opinions that they would like to have considered with respect to these issues. See R.C.S.A. § 10-4-22(a). Petitions for party or intervenor status and accompanying materials were required to be submitted no later than December 4, 2023. These petitions and accompanying materials were distributed to others seeking party or intervenor status and an opportunity to respond by January 3, 2024, was offered.

On November 29, 2023, Booker T. Washington Academy ("BTWA"), a state charter school, filed a Petition for Party Status, and five days later, on December 4, 2023, the New Haven Board of Education (New Haven BOE) also filed a Petition for Party Status. That same day, December 4, 2023, the Waterbury BOE filed a Brief as well as a Corrected Motion to Extend Time for Third Parties to File for Party Status or Otherwise Comment (the "Corrected Motion"). This was followed by a December 4, 2023, e-mail from BTWA, objecting to the Waterbury BOE's Corrected Motion.

On December 18, 2023, the CSDE denied the Corrected Motion and set the following schedule for remaining filings:

1. BTWA will have until January 4, 2024, to respond to the New Haven BOE's Petition for Party Status and Brass City Charter School's Petition for a Declaratory Ruling.

2. The New Haven BOE will have until January 4, 2024, to respond to the BTWA Petition for Party Status and Brass City Charter School's Petition for Declaratory Ruling.

3. Brass City and the Waterbury BOE will have until January 4, 2024, to respond to the New Haven BOE's Petition for Party Status and the BTWA's Petition for Party Status.

4. Brass City, BTWA, and the New Haven BOE will have until January 4, 2024, to respond to the Brief of the Waterbury Board of Education.

On January 4, 2024, Brass City and BTWA filed a Joint Response Brief. Additionally, on January 4, 2024, the New Haven BOE filed a Brief.

II. DETERMINATION OF PARTY STATUS

The CSDE finds that the legal rights, duties, or privileges of each of the following participants in this proceeding will be specifically affected by its decision in this case, and each is therefore granted party status pursuant to C.G.S. §4-176(d). See also Conn. Agencies Regs. §10-4-22.

Brass City Charter School
Booker T. Washington Academy
The Waterbury Board of Education
The New Haven Board of Education

III. ARGUMENTS SUBMITTED BY THE PARTIES

A. Brass City's Petition for a Declaratory Ruling

1. Reimbursement of Actual Costs

Brass City states that all of the students who attend Brass City are Waterbury residents and that Brass City ensures that students who are identified as having disabilities under the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §§1400, *et seq*. ("IDEA") receive the services mandated in each student's Individualized Education Program ("IEP"). Brass City writes that at least since the 2018-19 school year, it has sent detailed invoices to the Waterbury BOE, requesting reimbursement for one hundred percent (100%) of the actual cost of providing special education and related services to these students, but that the Waterbury BOE has refused to pay the actual cost of providing special education and related services.

Brass City states that the Waterbury BOE instead proposed a reimbursement formula that is "completely divorced" from the actual costs of providing special education and related services to special education students by calculating the reimbursement amount based on the difference between Brass City's and Waterbury Public Schools' per-pupil expenditures. (See Petition, p. 4

and Exhibit A (June 18, 2019, letter to Brass City from Waterbury's Corporation Counsel)). A review of the Waterbury Corporation Counsel's letter shows that Waterbury calculated the amount it believed it was obligated to pay Brass City by taking the difference between the Waterbury BOE's $19,973 per-pupil cost of educating a special education student and the $14,442 Brass City received per pupil from all state, federal, local, or private sources, and then multiplying the $5,551 difference by the number of students receiving special education services on a per-day basis. This resulted in a net total reimbursement cost of $141,051.33. Waterbury then deducted from this amount the value of "in-kind" services provided by the Waterbury BOE to Brass City, which Waterbury's Corporation Counsel calculated to be $104,109.98, resulting in a payment for the 2018-19 academic year of $36,941.35. (See Brass City Petition, Exhibit A).

Brass City's Executive Director objected to the use of this proposed formula in an e-mail to Waterbury's Superintendent of Schools, maintaining that reimbursement for special education and related services must be based on the actual cost of providing those services to special education students. (See Petition, Exhibit B, July 31, 2019, email from Executive Director Barbara L. Ruggerio, Ph.D.). In response, Waterbury's Superintendent refused to reimburse Brass City based on actual costs, citing a lack of state funding and what she characterized as the need to balance legal obligations, writing in part:

> It is my responsibility to balance the various legal responsibilities to adhere to the standards under the law and to support the needs of all students within the School District who require Special Education services. Sadly, the state has traditionally underfunded the District with respect to ECS funds and many other areas of support have remained flat or similarly underfunded, including funding for Special Education. As you know there are also considerable unfunded mandates that apply in a variety of areas which seem to grow annually. So, the consequence is that we must work to find solutions where we can while we meet our various legal obligations.

(Petition, Exhibit C, August 19, 2019, email from Dr. Verna D. Ruffin).

Brass City contends that in subsequent school years, 2019-20, 2020-21, and 2021-22, the Waterbury BOE continued to provide partial reimbursement based on the formula proposed in the Waterbury Corporation Counsel's original letter despite Brass City's objections and invoices for the actual cost of providing special education and related services to Waterbury students who attended Brass City. (Petition, pp. 4-5). Brass City alleges that as of the date of the Petition, and after taking into account the partial payments it had received from Waterbury, it was owed $748,893.07 for the actual cost of providing special education and related services to Waterbury students, adding that the "size of the outstanding balance is causing financial hardship for Brass City." (Petition p. 5; Exhibit E).[2]

In asserting that it is entitled to reimbursement "for the actual cost of providing special education and related services" Brass City cites the language of C.G.S. §10-66ee(d)(7) as well as an April 21, 2021, CSDE "formal memorandum" addressed to charter school leadership. (Petition,

[2]This amount is alleged to be due for the period through December 31, 2022. In Exhibit L, however, which is attached to the January 4, 2024, Joint Response Brief of Brass City and BWTA, Brass City alleges that through June 30, 2023, it is owed $1,044,408.07 from the Waterbury BOE.

Exhibit F, April 1, 2021, Memorandum from Lisa Lamenzo, Division Director, Turnaround Office) (the "CSDE Guidance"). Brass City contends:

> The plain language of Conn. Gen. Stat. §10-66ee(d)(7) requires the school district in which the student resides to pay the state charter school, on a quarterly basis, an amount equal to the difference between the reasonable cost of educating such student and the sum of the amount received by the state charter school for such student pursuant to subdivision (1) of this subsection and amounts received from other state, federal, local or private sources calculated on a per pupil basis.

(Petition, p. 5-6, internal quotation marks and ellipses removed). Brass City then quoted from the CSDE Guidance as follows:

> The intent of [Conn. Gen. Stat. § 10-66ee] is that the receiving school have neither a fiscal advantage nor disadvantage when delivering special education and related services to a student.…[I]n all cases **eligible costs must be based on actual costs incurred by the charter school to educate such student, which should be substantiated by requirements outlined in such student's IEP**.…It is incumbent on the Charter schools to maintain documentation that details how they arrived at the special education costs they are billing the home district for each student receiving services. For example, while there may be a rate agreed to for certain services, the actual hours billed must be per individual child. (Exhibit F, emphasis added and internal quotation marks removed)

(Petition, p. 6). Brass City concluded its argument by stating:

> The April 1, 2021, CSDE Guidance clearly states that State Charter Schools are required to bill Resident Districts based on the actual cost of providing the special education and related services as required by each student's IEP. Ipso facto, Resident Districts are required to reimburse State Charter Schools based on the actual cost of providing special education and related services as required by each student's IEP.
>
> (Petition, p. 6).

2. Reimbursement for Administrative and Planning Activities Costs

Brass City asserts that the provision of special education and related services in accordance with applicable federal and state laws requires many tasks in addition to direct instruction. Therefore, the actual cost of providing special education and related services includes, in addition to the cost of direct instruction, costs based on the percentage of time charter school personnel spend on administrative and planning activities directly related to the provision of special education and related services to Waterbury's special education students who attend Brass City. According to Brass City, these tasks include:

> [C]onducting assessments, administering interim benchmarks, and collecting data regarding students responses to interventions and progress towards IEP goals; drafting mandatory IEP progress monitoring reports; planning time to modify grade-level

> curriculum and methods of instruction to ensure accessibility and alignment with students' individualized needs and accommodations; and preparing for and attending planning and placement team meetings (PPTs), including drafting IEPs and time spent providing prior written notice of PPT meetings and IEP decisions.

(Petition, p. 11). Brass City noted that it employs a part-time special education coordinator and that all of the coordinator's responsibilities are related to providing special education and related services which are essential functions necessary to maintaining legal compliance. Brass City has included the cost of employment of the coordinator in its invoices to the Waterbury BOE, but the Waterbury BOE has communicated that it deems the services to be "non-essential" and has not included these costs as a reimbursable expense. (See Petition, p. 12 and Exhibit I). Brass City claims these costs are required to be paid pursuant to C.G.S. Section 10-66ee.

B. Brief of the Waterbury Board of Education

1. Reimbursement of Actual Costs

In its December 4, 2023, brief, the Waterbury BOE makes a number of arguments, the primary one of which is based on the language of the statute. The Waterbury BOE argues that C.G.S. §10-66ee(d)(7) requires reimbursement of the "reasonable costs" of a charter school's special education expenditures, not the "actual costs." Thus, the Waterbury BOE objects to Brass City's proposed interpretation of the statute because substituting the phrase "actual costs" for the actual statutory language of "reasonable costs" would, it claims, allow charter schools "to remain unchecked both on how they spend money to meet a student's special education needs, and how they bill those costs back to school districts." (Waterbury Brief, p.1, pp. 7-8). The Waterbury BOE writes: "Without the reasonable cost standard, local educational districts would be exposed to having to reimburse unnecessary education costs, which is not the intent of the statute." (Waterbury Brief, p. 8). The Waterbury BOE reiterates this concern elsewhere in its Brief stating, for example:

> Should the State Board adopt Brass City Charter's proposed interpretation the charter school could theoretically hire multiple special education providers based on administrative convenience or scheduling preferences. The reasonableness standard expressly used in the reimbursement statute ensures that the expenditures made for a student requiring special education and related services are appropriate and necessary. In practice, charter schools routinely hire more staff than the Resident district would need to implement the same IEP requirements within the district; and then, because the cost of the staff salary and benefits reflect the charter school's "actual" cost of staffing the services that they chose to provide to implement the IEP, the charter school then takes the actual staff salaries and benefits, adds them together and divides by the number of students serviced by that staff person to obtain the costs invoiced to the Resident District. This results in an untenable situation where the services in a student's IEP become orders of magnitude higher at the charter school than the cost of servicing the student in the resident District.

(Waterbury Brief, p.14).

The Waterbury BOE supports its argument that the reasonable cost standard must prevail by citing principles of statutory construction, including, but not limited to, Connecticut's "plain meaning" rule, which provides:

> The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

C.G.S. §1-2z. (Waterbury Brief, p. 9). Additionally, the Waterbury BOE cites instances in State Board regulations where the standard of "reasonable and necessary" is employed. (Waterbury Brief, p. 12-13).[3]

The Waterbury BOE asserts that its calculation of the special education costs that it was required to reimburse Brass City was in full compliance with the statute. The Waterbury BOE repeats the same formula that was originally set forth by the Waterbury Corporation Counsel, which asserted that "these figures represent reimbursement of the 'reasonable' costs associated with Brass City Charter School's provision of special education to students in full compliance of Conn. Gen. Stat. 10-66ee, and in full compliance with the requirements of the IDEA." (Waterbury Brief, p. 19). [4] The Waterbury BOE acknowledges that the calculation is based on the Waterbury BOE's own per pupil cost of educating a special education student. (Waterbury Brief, p. 18).

The Waterbury BOE also argues that the State Board should not issue a declaratory ruling on this matter. Rather, the Waterbury BOE claims that as the State Board is authorized to adopt regulations to determine the proper methodology for calculating reasonable costs, the State Board should engage in rulemaking rather than to address the issue presented here by a declaratory ruling, (Waterbury Brief, pp. 19-27), asserting that while "the State Board may factor actual costs as a limit on reasonable costs, it may not eliminate the reasonableness standard adopted by the legislature by simply substituting "actual cost" for "reasonable cost" by issuing a declaratory ruling under [C.G.S. 4-176]." (Waterbury Brief, p. 22).

The Waterbury BOE further contends that the State Board is not being asked to interpret the reimbursement requirements in Section 10-66ee(d)(7) or to resolve a specific controversy emanating from a dispute over the meaning of a law or regulation. Instead, the Waterbury BOE claims, the State Board is being asked to establish a "truncated methodology for determining reimbursable special education costs -- that is to enact a regulation -- by simply changing the plain language of a statute." (Waterbury Brief, p. 25). This, the Waterbury BOE purports, is neither a "proper nor efficacious use of a declaratory ruling" and that using a declaratory ruling in this way would also violate the State Constitution by avoiding review by the General Assembly's legislative regulation review committee. (Waterbury Brief, p. 26. See C.G.S. Sec. 4-170). Thus, it argues

[3]The Waterbury BOE also cites the use if the "reasonable cost" or "reasonable and necessary" standards in the Medicare statute and regulations. (Waterbury Brief, p. 15-17).

[4]Thus, Brass City and the Waterbury BOE agree on the manner in which the calculation was performed, although the disagree as to whether it is the proper calculation for purposes of C. G. S. Section 10-66ee(d)(7).

that the State Board should reconsider its decision to issue declaratory rulings on the two issues presented and instead "respectfully invites the State Board to find that formal regulations are necessary to implement the statutory requirements of [Section] 10-66ee." (Waterbury Brief, p. 29).

2. Reimbursement for Administrative and Planning Activities Costs

With respect to the second issue on which the State Board has agreed to issue a declaratory ruling, the Waterbury BOE argues that the percentage of time which charter school personnel spend on administrative and planning activities does not constitute reimbursable costs because these activities are conducted by the local Board of Education pursuant to C.G.S. §10-66ee(d)(7). (Waterbury Brief, pp. 27-28). "Therefore, the costs of any redundant administrative and planning activities conducted by the charter school are not reimbursable expenses." (Waterbury Brief, p. 28).

C. Response of Brass City and Booker T. Washington Academy

Brass City and BTWA filed a Joint Response Brief to the Brief of the Waterbury Board of Education and the Petition of the New Haven Board of Education for Party Status ("JRB"), in which they note that students with disabilities have the right to attend schools of choice, including state charter schools. (JRB, pp. 2-4). In support, Brass City and BTWA cite C.G.S. §10-4a(1) and (3), which in detailing the educational interests of the State includes the right of each child to have an equal opportunity to receive a suitable program of educational experiences and the reduction of racial, ethnic, and economic isolation. They also quote a 2003 CSDE Guidance document, which provides in part: "All students with disabilities have access to choice programs and retain all rights and protections under the [IDEA]." See *Bureau of Special Education and Public Services, Students with Disabilities & Parental Choice in Connecticut* (2003)(cited at JRB, p. 2).

Brass City and BTWA then note that per-pupil state funding for charter school students takes into account eligibility for free or reduced-price meals and English language learner status, but not eligibility for special education services, and state charter schools do not receive any funding from state, federal, local, or private sources to cover the cost of special education and related services. Consequently, their only funding source is payments from Resident Districts which, in turn, are eligible for excess-cost reimbursement from the State pursuant to C.G.S. Section 10-76g. (JRB, p. 4).

With respect to the argument that charter schools are entitled to payment of actual costs incurred in providing special education and related services, Brass City and BTWA cite C.G.S. §10-246*l* which addresses reimbursement for special education and related services for students enrolled in interdistrict magnet schools. Brass City and BTWA argue that the language of this statute is identical to that in Section 10-66ee for state charter schools and that magnet school operators throughout the state, including the Waterbury BOE and New Haven BOE have adopted "full actual cost" as the definition of "reasonable cost" when billing sending districts where the cost of educating students with disabilities. They argue that this magnet-school statute provides "well-established precedent" to define "reasonable cost" as "actual cost" within the context of charter schools. (JRB p. 5). Consequently, Brass City and BTWA conclude, "Resident Districts

should . . . reimburse State Charter Schools for actual costs in the same way that they expect sending districts to reimburse them for actual costs." (JRB p. 6). In support of this argument, Brass City and BTWA cite principles of statutory construction which they say instruct that statutes should be read together when they relate to the same subject matter as is the case here. (JRB, p. 6).

Brass City and BTWA then address what they describe as the Waterbury BOE and New Haven BOE argument that Resident Districts "will unfairly be held responsible for reimbursing State Charter Schools for special education and related services that are more expensive per pupil than what the Resident Districts provide to students who attend their schools, and that, if reasonable cost equates to actual cost, then there is no requirement that protects Resident Districts from having to reimburse unreasonable costs." (JRB p.7). Brass City and BTWA's response is two-fold. First, they argue that pursuant to C.C.S. §10-66ee(d)(7), the Resident Districts manage the planning process and determine the special education and related services that will be provided to students with disabilities who attend state charter schools. They then note that only the services in a student's IEP are eligible for reimbursement, which provides a clear boundary as to the services which may be provided by state charter schools and billed to Resident Districts. (JRB p.7). They then argue that "reasonable costs cannot mean a sum that is equal to or less than that incurred by the Resident Districts . . . because, based on economies of scale, State Charter Schools will almost always incur greater costs to educate students with disabilities as they serve fewer students . . . ." (JRB p.8). They argue that since students with disabilities must be afforded the opportunity to attend a state charter school, it would be unreasonable to deny charter schools full reimbursement, regardless of whether it costs more to provide students with services on a per-pupil basis. (JRB p.8).

Finally, Brass City and BTWA disagree with the Waterbury BOE's assertion that a declaratory ruling is not a proper mechanism for addressing the issues raised in the petition and that the state board should instead institute regulation making proceedings. They note that the declaratory ruling process has allowed for input from all special education stakeholders. (JRB at 12). They then argue that a declaratory ruling may address the applicability of a statutory provision to specific circumstances, and that they "are seeking 'the applicability to specified circumstances' -- that is, State Charter School reimbursement from Resident Districts in the context of educating students with disabilities --of the reasonable cost 'provision of the general statutes' that applies to them -- section 10-66ee." (JRB at 13)(citing C.G.S. §4-176(a)).

D. Brief of the New Haven Board of Education

1. Reimbursement of Actual Costs

The New Haven BOE also submitted a brief in response to the issues raised by BTWA in its Petition for a Party Status ("NH BOE Brief"). In that brief, the New Haven BOE objected to the BTWA and Brass City position that C.G.S. §10-66ee(d)(7) should be interpreted to permit charter schools to seek reimbursement from school districts for the "actual costs" of providing special education as opposed to the statute's language requiring reimbursement for "reasonable costs," arguing that the charter schools have no basis to seek this interpretation. (NH BOE Brief pp. 1-2, 9). In its brief, the New Haven BOE writes: "The meaning of the statutory text is plain and unambiguous, so there is no basis for any entity to interpret the Statute otherwise." (NH BOE

Brief, p. 9 (citing C.G.S. §1-2z and pertinent case law). The New Haven BOE objects to the Brass City and BTWA's interpretation because it "would result in charter schools being unchecked in spending money to meet a student's special education needs and billing such costs back to school districts." (NH BOE Brief p. 1). The New Haven BOE argues that such a change requires the adoption of formal regulations under Connecticut's Administrative Procedures Act. (NH BOE Brief p. 2, 8).[5]

The New Haven BOE argues at some length that the BTWA interpretation will lead school districts to be held financially responsible for unnecessary, tangential, and inappropriate costs. (NH BOE Brief, p. 10-15). It argues that the CSDE Guidance discussed above requires that "expenses the charter schools seek reimbursement for must be qualified by a reasonableness standard" and that existing regulations apply the reasonable standard to define allowable direct costs incurred by charter schools as opposed to actual costs. (NH BOE Brief, 11). See also Conn. State Agencies Regs. §10-66mm-5(a)). The New Haven BOE argues further that should the BTWA interpretation be implemented, the effectiveness of planning and placement team meetings will be severely limited, because the charter school could submit a variety of expenditures as actual costs, regardless of how the New Haven BOE, which has the statutory responsibility to develop the student's IEP, advised that special education services should be implemented. (NH BOE Brief p. 14). The New Haven BOE concludes its argument by asserting that it has complied with the statutory requirement that there be reimbursement of reasonable special education expenditures by offering to reimburse BTWA the equivalent of what it would cost the New Haven BOE to educate the students requiring special education within its own schools. (NH BOE Brief pp. 7-8, 16-17).

2. Reimbursement for Administrative and Planning Activities Costs

In its brief, the New Haven BOE argues: "The percentage of time charter school personnel spend on administrative and planning activities are not reimbursable costs contemplated by the Statute because administrative and planning activities are conducted by the local school district." (NH BOE Brief p. 15). According to the New Haven BOE argument, "administrative and planning activities are performed by the [planning and placement team] which is under the purview of the residence school district pursuant to Section(d)(7) of the Statute." (NH BOE Brief p. 15). It further contends that the charter school's sending of representatives to the planning and placement team meeting does not represent a separate and reimbursable cost for the charter school. (NH BOE Brief pp. 15-16). Thus, the New Haven BOE argues, the "costs of any redundant administrative and planning activities conducted by the charter school are not reimbursable expenses." (NH BOE Brief p. 16). The New Haven BOE does not address in detail administrative and planning activities that are conducted for activities which are not encompassed within the work of the planning and placement team.

3. A Declaratory Ruling is Not the Appropriate Procedural Device

The New Haven BOE argues, as did the Waterbury BOE, that the State Board should not

[5]The New Haven BOE then outlines issues as to payment of special education and related costs to BTWA for past years. The State Board will not address in this declaratory ruling proceeding the specific payment issues which have arisen between BTWA and the New Haven BOE. The State Board will consider the arguments made by BTWA and the New Haven BOE as to the two rulings which the State Board has agreed to issue.

grant the requested relief to Brass City and BTWA through a declaratory ruling. (NH BOE Brief p. 18-21). Instead, it claims:

> If BTW and Brass City's requested interpretation of the Statute was granted through a State Board's declaratory ruling, the State Board would have made an adjudication of the merits of the claims presented by the petitioners without providing *all* stakeholders the means to submit evidence and participate in a formal hearing and/or fact-finding process. Such a result would be inappropriate and outside the State Board's power.

(NH BOE Brief p. 21) (emphasis in original).

IV. DISCUSSION OF LEGAL ISSUES RAISED IN PETITION AND OBJECTIONS THERETO

As previously set forth, Brass City's Petition for Declaratory Ruling is predicated upon Section 10-66ee(d)(7) of the Connecticut General Statutes, which allocates the programmatic and financial responsibilities of Resident Districts and the state charter schools with respect to the provision of special education and related services to students who are residents of such districts but attend charter schools. These responsibilities are delineated as follows:

First, Section 10-66ee(d)(7) provides that the Resident District shall: "Hold the planning and placement team meeting for [each] student and shall invite representatives from the charter school to participate in such meeting." Thus, the Resident District is responsible for holding the Planning and Placement Team, or "PPT," meeting, at which the PPT determines the student's Individualized Education Program, or "IEP," which expressly sets forth the special education and related services that are to be provided to the student. A representative of the charter school is a member of the PPT.

Second, Section 10-66ee(d)(7) provides that "[t]he charter school that a student requiring special education attends shall be responsible for ensuring that such student receives the services mandated by the student's individualized education program whether such services are provided by the charter school or by the school district in which the student resides." As such, the Resident District can choose either to have the charter school provide the special education and related services that its PPT has recommended or to provide these services themselves.

Third, the statute provides that the Resident District "shall pay to the state charter school, on a quarterly basis, an amount equal to the difference between the reasonable cost of educating such student and the sum of the amount received by the state charter school for such student pursuant to subdivision (1) of this subsection and amounts received from other state, federal, local or private sources calculated on a per pupil basis."[6] Should such payments exceed the excess-cost threshold set forth in C.G.S. §10-76g, the Resident District is eligible for reimbursement of such excess costs pursuant to Section 10-76g.

[6] C.G.S. §10-66ee(d)(1) sets forth the formula for computing state payments to state charter schools.

A. A Declaratory Ruling Is An Appropriate Procedure In This Matter

Connecticut's Uniform Administrative Procedure Act ["UAPA"] "empowers administrative agencies to issue declaratory rulings based on their interpretation of statutes." Muffler Shop of East Hartford, Inc., et al. v. Department of Labor, 1990 WL 269179 at *3 (Conn. Super. 1990)(citing C.G.S. §4-176). In fact, the Connecticut Supreme Court has held:

> There are clear indications in the Uniform Administrative Procedure Act . . . that the legislature intended that administrators issue declaratory rulings based on their interpretations of statutes . . . [as] administrative agencies must necessarily interpret statutes which are made for their guidance. To rule otherwise would be to ignore the subtle and intricate interaction of law and fact.

Connecticut Life & Health Ins. Guaranty Assn. v. Jackson, 173 Conn. 352, 356 (1977), *quoted in*, SDE Interchange Joint Venture v. State of Connecticut Commissioner of Transportation, 2011 WL 3276716 at *3 (Conn. Super. June 29, 2011). As such, the "administrative ruling as to the meaning of the law has been made an integral part of the process of statutory interpretation under the UAPA. Muffler Shop of East Hartford, Inc., et al. v. Department of Labor, 1990 WL 269179 at *3. In their respective filings, however, both the Waterbury BOE and the New Haven BOE assert that a declaratory ruling is not appropriate. To the contrary, the Waterbury BOE argues at length that the State Board should instead initiate the regulation-enactment process to address the reimbursement provision in C.G.S. §10-66ee(d)(7), (see Waterbury BOE Brief, pp. 19-27), going so far as to claim that the State Board "is *required* to engage in rulemaking." Id., p. 22 (emphasis added). There is, however, no applicable legal authority to support this rather sweeping contention, which is reflected in the fact that the Waterbury BOE's argument is predicated solely upon a *dissenting* opinion issued in a 2007 *Maryland* court case. Id., pp. 22-24.[7]

Additionally, the New Haven BOE claims that by issuing a declaratory ruling, "the State Board would have made an adjudication of the merits of the claims presented by the petitioners without providing *all* stakeholders the means to submit evidence and participate in a formal hearing and/or fact-finding process." New Haven BOE Brief, p. 21 (emphasis in original). The CSDE is puzzled by this contention, for as previously discussed in the "Background and Procedural History" section of this Declaratory Ruling, the CSDE provided ample notice to *all* school districts and charter schools of the Brass City Petition and of their right to seek to be joined as parties or intervenors. In fact, it was in response to that notice that the New Haven BOE sought and obtained party status.

Furthermore, there is no legal requirement that the State Board convene a formal hearing. To the contrary, C.G.S. §4-176(b) provides in relevant part: "Each agency shall adopt regulations, in accordance with the provisions of this chapter, that provide for . . . the procedural rights of persons with respect to the petitions." In turn, the regulations previously promulgated by the State Board provide: "If a ruling on the petition is granted, the agency shall: (A) Issue a declaratory ruling; (B) Order the matter set for specified proceeding; ***or*** (C) Agree to issue a declaratory ruling by a specified date." Conn. Agencies Regs. §10-4-22(c)(2)(emphasis added). Thus, although the State Board has the option to set down a hearing on a request for declaratory ruling, it is not

[7]Baltimore City Bd. of School Commissioners v. City Neighbors Charter School, 400 Md. 324, 361 (2007).

obligated to do so. This is underscored by Section 10-4-22(c)(3) of the regulations, which provides: "***If*** the agency deems a hearing necessary or helpful in determining any issue concerning the petition for declaratory ruling, the agency shall schedule such hearing and give such notice thereof as shall be appropriate." Id. (emphasis added). In short, the provision of a hearing is a matter of discretion, ***not*** right.

The Resident Districts' argument also ignores the fact that the Connecticut Supreme Court has repeatedly recognized the "expansive right to petition for a declaratory ruling under §4-176(a)." Connecticut Indep. Utility Workers, Local 12924 v. Department of Public Utility Control, 312 Conn. 265, 278 (2014). See also Lopez v. Board of Educ. of City of Bridgeport, 310 Conn. 576, 601 n. 23 (2013); Bingham v. Dept. of Public Works, 286 Conn. 698, 706 (2008). Discussing that "expansive right," the Connecticut Supreme Court has unambiguously held that under C.G.S. §4-176(a): "'*Any* person may petition an agency . . . for a declaratory ruling as to . . . the applicability to specified circumstances of a provision of the general statutes . . . within the jurisdiction of the agency.'" Connecticut Indep., 312 Conn. at 277 (quoting C.G.S. §4-176(a))(emphasis in original). In fact, the court held that Section 4-176(a) "confers [such] broad rights," that "any member of the public [may] file a petition for a declaratory ruling without the need to establish any specific, personal and legal interest in the matter." Connecticut Indep., 312 Conn. at 277.

In the present matter, Brass City has not only demonstrated a direct "interest in the matter," Id., it has otherwise set forth a proper basis for a declaratory ruling. Brass City specifically "petitions for a declaratory ruling regarding the interpretation and application of Connecticut General Statutes [section] 10-66ee," which is obviously a provision of the general statutes, to specified circumstances, namely "the reimbursement by [the Waterbury BOE] for the cost of providing special education and related services to Waterbury resident students who attend Brass City." (Petition, p. 1). Additionally, pursuant to C.G.S. §10-4a, the statutory provision in question is "within the jurisdiction of the [State Board]." Connecticut Indep., 312 Conn. at 277. See also C.G.S. §4-176(a). Thus, having clearly satisfied the criteria set forth in Section 4-176(a), Brass City has established the right to petition for a declaratory ruling. As such, the State Board may properly issue declaratory rulings based on its interpretation of the statute in question, C.G.S. §10-66ee(d)(7). See Connecticut Hospital Association v. Commission on Hospitals and Health Care, 200 Conn.133, 139 (1988)(citing Connecticut Life & Health Ins. Guaranty Assn. v. Jackson, 173 Conn. 352, 356 (1977)).

B. Reimbursement of Actual Costs of Providing Special Education and Related Services

At its core, the initial issue before the State Board is whether the word "reasonable," as used in Section 10-66ee(d)(7) of the Connecticut General Statutes, has a different meaning than the word "actual." In turn, the resolution of this question determines whether Brass City, Booker T., and similarly situated charter schools are entitled to reimbursement by Resident Districts of the actual costs the charter schools have incurred in the provision of special education and related services to students who live in the Resident Districts but attend a charter school, or whether they are only entitled to those costs that the Resident Districts deem "reasonable." As noted, Section 10-66ee(d)(7) provides:

> In the case of a student identified as requiring special education, the school district in which the student resides shall: (A) Hold the planning and placement team meeting for such student and shall invite representatives from the charter school to participate in such meeting; and (B) pay the state charter school, on a quarterly basis, an amount equal to the difference between the **reasonable cost** of educating such student and the sum of the amount received by the state charter school for such student pursuant to subdivision (1) of this subsection and amounts received from other state, federal, local or private sources calculated on a per pupil basis. Such school district shall be eligible for reimbursement pursuant to section 10-76g.

Id. (emphasis added).

In arguing that the reimbursement of special education costs must be considered within the context of what is "reasonable," the Resident Districts cite C.G.S. §1-2z, which provides:

> The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

Perhaps not surprisingly, the Resident Districts pay particular attention to that part of Section 1-2z which states that a statute's meaning "shall, in the first, instance, be ascertained from the text of the statute itself." Id. More specifically, they note that Section 10-66ee(d)(7) uses the term "reasonable" when referencing the special education costs for which the Resident Districts are required to reimburse charter schools, and essentially argue that as such, the statute plainly and unambiguously limits their reimbursement obligation to those amounts they deem reasonable.

The application of Section 1-2z, however, is more nuanced, for as the Connecticut Appellate Court has held:

> "It is useful to remind ourselves of what, in this context, we mean when we say that a statutory text has a plain meaning, or . . . a plain and unambiguous meaning. [Our Supreme Court] has already defined that phrase. By that phrase we mean the meaning that is so strongly indicated or suggested by the language as applied to facts of the case, without consideration, however, of its purpose or the other, extratextual sources of meaning . . . that, when the language is read as so applied, it appears to be ***the*** meaning and appears to preclude any other likely meaning . . . . Put another way, if the text of the statute at issue, considering its relationship to other statutes, would permit more than one likely or plausible meaning, its meaning cannot be said to be plain and unambiguous."

State v. Prazeres, 97 Conn. App. 591, 595 (2006)(quoting State v. Kalman, 93 Conn. App. 129, 133-34, *cert. denied*, 277 Conn. 915 (2006))(emphasis in original). Consequently, when interpreting statutory language, a tribunal is:

> "to go through the following initial steps: first, consider the language of the statute at issue, including its relationship to other statutes, as applied to the facts of the case; second, if after the completion of step one, [the court] conclude[s] that, as so applied, there is but one likely or plausible meaning of the statutory language, [the court] stop[s] there; but third, if after the completion of step one, [the court] conclude[s] that, *as applied to the facts of the case, there is more than one likely or plausible meaning of the statute*, [the court] may consult other sources, beyond the statutory language, to ascertain the meaning of the statute."

State v. Smith, 209 Conn. App. 296, 305 (2021)(quoting State v. Prazeres, 97 Conn. App. at 594-95)(emphasis added).

This interpretive approach comports with the well-established fact that Connecticut's courts do "not interpret statutes in a vacuum." State v. Ellis, 197 Conn. 436, 445 (1985). See also State v. Scott, 256 Conn. 517, 538-39 (2001); State v. Cobb, 251 Conn. 285, 387 (1999); State v. Golino, 201 Conn. 435, 442 (1986). To the contrary, "[w]hen aid to the meaning of a statute is available, 'there certainly can be no "rule of law" which forbids its use, however clear the words may appear on "superficial examination."'" State v. Ellis, 197 Conn. at 445 (quoting Train v. Colorado Public Interest Research Group, 426 U.S. 1, 10, 96 S. Ct. 1938, 1942 (1976), *quoting in turn*, United States v. American Trucking Assn., 310 U.S. 534, 543–44, 60 S. Ct. 1059, 1063–64 (1940)). Thus, when legislative language "would permit more than one likely or plausible meaning," State v. Prazeres, 97 Conn. App. at 595, a tribunal "must ascertain the statute's meaning by considering [in part] . . . the purpose it is designed to serve." State v. Ellis, 197 Conn. at 445 (quoting Bahre v. Hogbloom, 162 Conn. 549, 554 (1972)).

In order to ascertain the purpose that Section 10-66ee(d)(7)'s reimbursement provision is "designed to serve," it is necessary to consider the greater context of the issue in dispute. To that end, it must first be understood that the provision of special education services is highly regulated under both federal and state law, each of which mandate that the specialized instruction and related services to which a child who qualifies for special education is entitled be expressly delineated in an IEP, "which is a written statement tailored to each disabled child's unique educational needs." J.B. v. Killingly Bd. of Educ., 990 F. Supp. 57, 66 (D. Conn. 1977). See also 20 U.S.C. §1414(d).[8] A mandatory component of an IEP is:

> a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child.

20 U.S.C. §1414(d)(1)(A)(iii). As such, the IEP is the vehicle by which schools and school districts "ensure access for all disabled children to a free appropriate public education that 'emphasizes special education and related services *designed to meet their unique needs* and prepare them for employment and independent living.'" J.B., 990 F. Supp. At 66 (quoting 20 U.S.C. §1400(d)(1)(A))(emphasis added).

[8]While they have the same meaning, the terms "disabled children" or "handicapped child[ren]" as used in these earlier court decisions have generally been superseded by "children with disabilities."

A free appropriate public education, or "FAPE," is "educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." Board of Educ. Of Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176, 188-89, 102 S. Ct. 3034, 3041-42 (1982). See also Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 122 (2nd Cir. 1998). In short, a school district "must ensure that each disabled child has meaningful access to special education and related services." Rowley, 458 U.S. at 192, 102 S. Ct. at 3043-44.

In Connecticut, an IEP is developed during a PPT meeting after a child is initially identified as having a disability which requires specialized instruction. Conn. Agencies Regs. §10-76d-10.[9] "The IEP must include statements of a disabled child's present level of education, instructional objectives and criteria for determining if the child is meeting these goals, *specific educational services to be provided to each disabled child*, and any necessary transition services." J.B., 990 F. Supp. at 66 (emphasis added). See also Conn. Agencies Regs. §10-76d-11(a). As such, the IEP is the "absolutely critical ingredient in the special education program for a child in need." Connecticut-Unified Sch. Dist. No. 1 v. State Dept. of Educ., 45 Conn. Supp. 57, 67, 699 A.2d 1077,1084 (1997). As previously noted, C.G.S. §10-66ee(d)(7) provides:

> In the case of a student [who attends a charter school and is] identified as requiring special education, the school district in which the student resides shall: (A) Hold the planning and placement team meeting for such student and shall invite representatives from the charter school to participate in such meeting.

It is, then, the Resident District, and not the charter school, that is responsible for convening and chairing the PPT meeting, which, as noted, determines the "specific educational services to be provided to each disabled child" who attends the charter school. J.B., 990 F. Supp. at 66; Conn. Agencies Regs. §10-76d-11(a). In addition to the appropriate representatives from the Resident District, the PPT is also comprised of a student's parents or guardians, 20 U.S.C. §1414(d)(1)(B); 34 C.F.R. §§300.321 & 300.322, as well as "representatives from the charter school. C.G.S. §10-66ee(d)(7). As such, the "specific educational services" to which a student is entitled are discussed and determined among the Resident District, the parents or guardians, and the charter school. In other words, there is no mystery as to the extent of the services to which the student will be entitled at the charter school. To the contrary, they are in large part ordained by the Resident District.

It is also important to understand that the IEP is not crafted in a vacuum. In other words, in developing a student's educational program, federal law requires that the PPT identify in the IEP "the anticipated frequency, location, and duration of those services." 20 U.S.C. §1414(d)(1)(A)(vii). In the case of students attending charter schools, Connecticut law provides that:

> The charter school a student requiring special education attends shall be responsible for ensuring that such student receives the services mandated by the student's individualized education program whether such services are provided by the charter school or by the school district in which the student resides.

[9]The PPT is the equivalent of the "IEP Team" under the federal Individuals with Disabilities Education Improvement Act of 2004. See 20 U.S.C. §1414(d)(1)(B); 34 C.F.R. §§300.321 & 300.322.

C.G.S. 10-66ee(d)(7). Again, then, it is clearly understood that the special education and related services determined by a student's PPT and set forth in the child's IEP will be provided at the charter school and by the charter school unless, of course, the Resident District assumes responsibility for providing them. Having iterated the services that are required by a student in order to make meaningful educational progress pursuant to 20 U.S.C. §1414(d)(1)(A)(ii) at the charter school, the Resident District certainly understands that the provision of those services will come at a cost. Furthermore, unless it chooses to provide the required services, the Resident District also certainly understands that this cost will be borne in the first instance by the charter school. It is this cost that the Resident District is ultimately required to reimburse to the charter school in accordance with Section 10-66ee(d)(7).

This statutory obligation comports with the fact that regardless of whether the student attends the charter school, the child is still a resident of such district, and when it comes to providing appropriate special education services, a child's "'residency, rather than enrollment triggers a district's FAPE obligations.'" M.A. v. Torrington Bd. of Educ., 930 F. Supp.2d 245, 269 (D. Conn. 2013)(quoting Moorestown Township. Bd. of Educ. v. S.D., 811 F.Supp.2d 1057, 1069 (D.N.J. 2011)). "Thus, in accord with the 'case law in this circuit,' [Resident Districts have] "a continuing responsibility to develop an IEP even after [a student has] been parentally placed." M.A., 930 F. Supp.2d at 269 (internal quotations omitted). As such, and even with respect to students who have been unilaterally placed by their parents in a charter school, the Resident District "must ensure that each [such] disabled child has meaningful access to special education and related services," Rowley, 458 U.S. at 192, 102 S. Ct. at 3043-44, for "'just because the Student was enrolled outside of [the Resident District]'" does not relieve [the Resident District] "'from having to fulfill its own responsibilities as the LEA of residence to . . . make FAPE available.'" M.A., 930 F. Supp.2d at 270 (quoting District of Columbia v. Abramson, 493 F.Supp.2d 80, 85-86 (D.D.C. 2007)).

Within this context, then, the issue remains whether in determining the costs of providing these legally required special education services, the terms "reasonable" and "actual" are, as the Resident Districts claim, antonymic. The Connecticut Appellate Court has held that "reasonable efforts mean doing everything reasonable, not everything possible . . . . [R]easonableness is an objective standard ... and whether reasonable efforts have been proven *depends on the careful consideration of the circumstances of each individual case*." In re Kyara H., 147 Conn. App. 855, 872-73, 83 A.3d 1264, *cert. denied*, 311 Conn. 923, 86 A.3d 468 (2014)(emphasis added).[10] The crux of the issue in the present matter is the Resident Districts' assertion that they have the right to determine whether the special education and related services costs charged back to them by a charter school are reasonable. This unilateral assessment, however, would be inherently *subjective*, not objective. It would also be at odds with the federal and Connecticut statutory frameworks underlying the provision of special education services.

[10]As such, and as discussed at pages 14 through 15 hereof, this "consideration of the circumstances of each individual case" aligns with the comparable considerations articulated by the Connecticut Supreme Court in State v. Ellis, 197 Conn. 436, 445 (1985) and its progeny as well as by the Connecticut Appellate Court in both State v. Prazeres, 97 Conn. App. 591, 595 (2006) and State v. Smith, 209 Conn. App. 296, 305 (2021).

As discussed, federal law requires that a student's IEP contain "a statement of the special education and related services and supplementary aids and services . . . to be provided to the child. 20 U.S.C. §1414(d)(1)(A)(iii). The IEP, however, not only sets forth the substance of the special education and related services to which a child is legally entitled, it also constitutes the parameters of such services. In other words, just as school personnel are prohibited from unilaterally subtracting services from a student's educational program, so too are they proscribed from unilaterally *adding* them. To the contrary, all such decisions fall solely within the authority of the PPT, and federal law clearly provides that if revisions of the IEP are necessary, it is the PPT's obligation to convene and make such appropriate amendments. 20 U.S.C. §1414(d)(4). Thus, in implementing an IEP, a school district or, in this case, a charter school, is necessarily required, and empowered, *only* to do "everything reasonable, not everything possible" to provide a free appropriate public education. In re Kyara H., 147 Conn. App. at 872-73. That is because, as noted, "reasonableness is an objective standard," and in cases involving the implementation of an IEP, that standard is established by the IEP.

In its brief, the Waterbury BOE argued: "Without the reasonable cost standard, local educational districts would be exposed to having to reimburse unnecessary education costs, which is not the intent of the statute." Waterbury Brief, p. 8. The New Haven BOE offered a similar argument. NH Brief, pp. 10-15. Nonetheless, having chaired the PPT meeting and taken the lead in setting forth the "special education and related services and supplementary aids and services . . . to be provided to the child, 20 U.S.C. §1414(d)(1)(A)(iii), and having as part of that process designated the "anticipated frequency, location, and duration of those services," 20 U.S.C. §1414(d)(1)(A)(vii), it is *unreasonable* for the Resident District to then complain about the cost of implementing those services. As discussed, charter schools do not have free rein to provide students with services that are in excess of – or not expressly provided for in – the IEP. To the contrary, they are constrained by the four corners of the IEP. This is a fact that Brass City and BTWA expressly acknowledged in their Joint Reply Brief. JRB, p. 7. If the charter school believes that a student requires more services and supports than those set forth in the IEP, it is legally obligated to request a PPT meeting to discuss and address its concerns. 20 U.S.C. §1414(d)(4). Thus, should it instead unilaterally decide to provide additional interventions, it would not only be acting contrary to the law, but it would be solely responsible for the costs of those services.

The Resident Districts also express concern that equating "reasonable" with "actual," could give free rein to charter schools to procure services set forth in the IEP at costs that would be far higher than the costs would be for comparable services within the Resident Districts. They provide no evidence of this being an actual pattern of conduct, however, nor do they provide any insights into what the charter schools' rationale would be for doing so. Charter schools are not for-profit entities. Moreover, the fact that a Resident District may be able to provide services for a lower cost than a charter school does not in itself mean that a charter school's higher costs are not reasonable. If a charter school is incurring costs set by the marketplace for the provision of a service, the cost may be deemed reasonable even if the cost is greater than the cost which the Resident District may incur for the same service.

The Resident Districts' arguments seem centered around the contention that some charter schools – due to their having fewer students – have a smaller student-to-teacher ratio than do many public schools. Thus, whereas a special education teacher within a public school may have a

caseload of, say, eighteen students, a special education teacher at a charter school may have a caseload of only six students. Similarly, a service provider such as a speech and language pathologist may have only a handful of students with whom to work whereas the caseload in a public school would almost certainly be larger. This, the Resident Districts assert, is inherently inequitable to the students within their own schools.[11]

The Resident Districts do not offer a solution for this disparity in the educator-student ratio. Enrollment in charter schools is typically determined by a lottery process, and the schools have no say in the demographic of such students. They certainly cannot "engineer" the number of students with or without disabilities. As discussed, however, charter schools are statutorily required to "ensur[e] that [a special education] student receives the services mandated by the student's individualized education program." C.G.S. §10-66ee(d)(7). Consequently, even were the lottery process to result in Brass City having only one special education student, Brass City would still be required to provide that student with services and, by extension, hire personnel to do so. The fact that the resultant one-to-one ratio would be far different from the typical teacher-student ratio in the Resident Districts would ultimately be irrelevant, for the driving factor is, again, the legal requirement to provide special education students with a free appropriate public education as delineated in, and required by, their IEPs.

There is, of course, an alternative. As previously noted, Section 10-66ee(d)(7) provides in part:

> The charter school a student requiring special education attends shall be responsible for ensuring that such student receives the services mandated by the student's individualized education program whether such services are provided by the charter school *or by the school district in which the student resides*.

Therefore, if Resident Districts sincerely believed that the costs of the special education services being provided to its students in the charter school were excessive, they have the option to provide such services. There is no statutory provision that dictates how Resident Districts would effectuate such provision of services; therefore, Resident Districts could either provide them within their own buildings or on site at the charter school, using either their own staff or individuals with whom they had contracted.

According to Brass City, this was the paradigm that the Waterbury BOE previously employed to large extent. More specifically, Brass City noted that in the past, the Resident District had provided personnel, including certified teachers, paraprofessionals, social workers, therapists, psychologists, and special education supervisors, to implement special education and related services. Exhibit B. Brass City, however, notes that the Resident District is no longer providing these services. Given that, Brass City contends that it was reasonable for the Resident Districts to recognize that Brass City would be required to provide these services, that Brass City would incur

[11]As discussed, the *individualized* special education and related services to which a child is entitled is determined by the PPT and set forth in the student's IEP. Thus, a student who requires, say, ten hours a week of specialized instruction would receive it regardless of whether the student was in a charter school or in his or her school district. Given that, it is difficult to see where this purported inequity lies.

personnel and related costs in doing so, and that the Resident Districts would be responsible for reimbursing Brass City for such costs.

With respect to such staffing costs, it is notable that despite expressing their concerns about the reasonableness of the charter school's special education and related services costs, neither of the Resident Districts has raised any issues as to the salary levels or the cost of benefits of the personnel providing these services at Brass City. One could, therefore, conclude that the Resident Districts do not contend that such individuals' salary levels and benefits are excessive or otherwise do not align with the commonly accepted rates for such services and, thus, do not contest their reasonableness. In any event, Brass City has provided justifications for both the services provided and their cost.

It is also important to understand that equating reasonable costs with actual costs does not necessarily represent the financial hardship claimed by the Resident Districts. As noted in guidance previously issued by the CSDE, it is incumbent upon charter schools to document the costs that they have incurred in the provision of these special education and related services. Additionally, "actual costs" are just that, *actual*. For example, and using the previous example of speech services, should a speech and language pathologist at the charter school have only three students with whom to work, and should these speech services consist of a one-to-three, small-group session three times a week for a total of three hours a week, the actual costs would be the time expended meeting collectively with the students as well as documenting their progress and otherwise implementing the students' respective IEPs. Any other time for which the charter school would retain the speech pathologist would not constitute the actual costs of implementing the students' IEPs and would therefore not be reimbursable.[12]

Similarly, if the three students in this hypothetical were from three different districts, the actual costs incurred by the charter school for those three, one-hour sessions would not amount to nine hours; rather, the actual provision of direct services would still be three hours, and each district would be responsible for one-third of the three hours. While a charter school might seek to argue that each of the three students were entitled to three hours a week of speech and language services, and thus the provision of the direct services to these three students was the equivalent of nine hours, the fact is that the charter would have only paid for three hours of direct services, and thus that was the *actual* cost to the school. Needless to say, if these students' respective IEPs called for three hours a week of one-on-one – rather than small-group -- direct instruction, then that would be different, and the actual costs would be nine hours of direct services, three hours of which would be equally allocated to each of the respective districts.

Unlike speech pathologists or related-service providers, such as physical therapists and occupational therapists, it is reasonable to assume that it would be far more likely that a special education teacher, or teachers, would be required on a full-time basis. For example, were a student's disability sufficiently profound as to require small-group instruction in a resource room or a self-contained classroom, or were there a student, or students, who required co-teaching by a regular education and a special education teacher, it would ultimately be irrelevant whether there

[12]As is evident from this hypothetical, the requirement that the "actual cost" be paid itself serves as a limitation on the amount paid by the Resident District, for certainly a Resident District would not be required to pay more than the actual cost incurred by the charter school.

were only a limited number of students who required such interventions. Again, the Resident Districts "must ensure that each disabled child has meaningful access to special education and related services," Rowley, 458 U.S. at 192, 102 S. Ct. at 3043-44, for "'just because the Student was enrolled outside of [the Resident District, the District] is not relieved "from having to fulfill its own responsibilities as the LEA of residence to . . . make FAPE available." M.A., 930 F. Supp. at 270 (quoting District of Columbia v. Abramson, 493 F.Supp.2d 80, 85-86 (D.D.C. 2007)). Thus, if the PPT convened by the Resident District determined the student required such interventions, it cannot then take the position that it is not required to pay their actual costs because the number of special education students in a charter school's resource room or co-taught classroom is far less than would be in the Resident District's schools.

The requirement that Resident Districts reimburse charter schools for the costs of providing the special education and related services set forth in a student's IEP also negates the Resident Districts' claims that it is only responsible for paying an amount equal to its own per-pupil expenditures. See Waterbury Brief, p. 18. There is no legal justification for that position. It is also one that the Resident Districts clearly do not apply within their own schools, for the services they provide to their own students are not capped by the per-pupil expenditure. They are instead determined and driven by the IEP, regardless of the accompanying costs.

Additionally, and as is true with all school districts, there are occasions when a Resident District's PPT determines that the least restrictive environment for a student with an especially profound disability is in an out-of-district, approved private special education program. It is inconceivable that its PPT having recommended such a placement, the Resident District would agree to pay only the equivalent of its per-pupil expenditure. Again, there would be no legal basis for taking such a position, and, practically speaking, the private special education program would not accept such terms. Consequently, a Resident District would be expected to pay the actual costs of this placement. Although these costs can be extraordinarily high, districts are entitled to seek excess-cost reimbursement from the State pursuant to C.G.S. §10-76g.

In fact, Section 10-76g provides a useful guide to the interpretation of Section 10-66ee(d)(7). As previously discussed, C.G.S. §1-2z provides in part: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes." Id. See also Dias v. Grady, 292 Conn. 350, 354-55 (2009). As such, it is appropriate to consider Section 10-66ee(d)(7), which at least in part addresses financial responsibility for special education costs for students in charter schools, in conjunction with Section 10-76g, which addresses financial responsibility for special education costs for students in school districts.

More specifically, Section 10-76g(b) provides in relevant part: "Any local or regional board of education which provides special education pursuant to the provisions of sections 10-76a to 10-76g, inclusive . . . shall be financially responsible for the reasonable costs of special education instruction, *as defined in the regulations of the State Board of Education*." Id. (emphasis added). Similarly, in addressing special education students who have been placed by a public agency – other than a school district – "in a private residential facility or . . . a facility or institution operated by the Department of Children and Families," Section 10-76(a)(2) provides that the local or regional board of education which would otherwise be responsible for the student's educational

programming and placement "shall be eligible to receive *one hundred per cent of the reasonable costs of special education for such child as defined in the regulations of the State Board of Education*." Id. (emphasis added).

In turn, the State Board regulations provide: "A board of education shall receive payment for *the cost* of special education and related services according to the provisions of sections 10-76a to 10-76ii, inclusive, of the Connecticut General Statutes." Conn. Agencies Regs. §10-76b-4 (emphasis added). Obviously, Section 10-76g falls within the span of sections 10-76a to 10-76ii addressed in Regulation 10-76b-4. As such – and pursuant to the statutory language set forth in both Sections 10-76(a)(2) and 10-76g(b) – these sections are governed by the regulations' characterization of what constitutes "the reasonable costs." And, as is clearly set forth therein, Regulation §10-76b-4 uses the term "cost," thereby conflating and treating as the same the terms "reasonable costs" with "cost."

To reiterate, C.G.S. §1-2z provides in part: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself *and its relationship to other statutes*." Id. (emphasis added). In considering Section 10-66ee(d)(7) in conjunction with Section 10-76g, then, it would be illogical to assert that "reasonable costs," when used in Section 10-76g, means actual costs, but when employed in Section 10-66ee(d)(7), it does not. Both statutes address financial responsibility for providing services to special education students, and there can be no justification for asserting that Resident Districts are responsible for the actual costs of special education students within their educational jurisdiction who attend district schools but not for the actual costs of students within their educational jurisdiction who attend charter schools. It is similarly baseless to claim that Resident Districts are entitled to be reimbursed "one hundred percent" of the special education costs for students within their educational jurisdiction whom other public agencies have placed in private facilities, but they are not obligated to reimburse charter schools for one hundred percent of the special education costs for students within their educational jurisdiction whose parents have placed them in charter schools.

Of note, Section 10-66ee(d)(7) provides that Resident Districts "shall be eligible for reimbursement pursuant to Section 10-76g" should the cost of providing special education services to a student at a charter school exceed Section 10-76g's excess-cost threshold. This recognizes that the actual costs of providing special education and related services to a charter school student could prove equally expensive as placing a student in a private, out-of-district special-education program. As such, this provision undercuts the Resident Districts' contention that they need only reimburse charter schools in an amount equal to the districts' per-pupil expenditure.[13] It also militates against the Resident Districts' contention that any and all such costs must be limited to

[13]Per-pupil expenditures are, as the term suggests, based upon an averaging of district costs across the entire student body, the vast majority of which are non-special-education students. One could therefore reasonably argue that the Resident Districts' use of per-pupil expenditures as the indicia of what constitutes reasonable costs would essentially mean that the Resident Districts were not predicating their reimbursement upon the costs of providing special education and related services but rather on some artificial figure totally divorced from the IEP. Even were the per-pupil calculation based solely on a Resident District's average expenditure on special education students, that would still be an inappropriate basis for calculating reimbursements as students are individuals, their needs are singular, the individualized services and consequent costs of providing special education and related services can vary widely among students, and the cost of addressing the educational needs of a profoundly disabled student cannot be arbitrarily restrained by a lesser, per-pupil average cost.

what they subjectively determine to be reasonable. After all, that proposition would essentially be that while a Resident District would only have to reimburse the charter school for what it deemed *reasonable* costs, if the expenditures exceeded the excess-cost threshold set forth in Section 10-76b, the Resident District would be entitled to reimbursement for the *actual* costs of such excess costs. That is simply unreasonable. In short, a Resident District cannot legally provide students who reside in district but attend a charter school with lesser opportunities to receive a free appropriate public education than those who remain within their own schools. M.A., 930 F. Supp. at 270.

In its filings in support of its Petition for Declaratory Ruling, Brass City asserted that Waterbury had sought to offset the actual costs of Brass City's provision of special education and related services by citing amounts it had incurred providing services to some of the students who attended Brass City. It is undisputed that Brass City's enrollment draws exclusively from Waterbury. Thus, if – as is contemplated in Section 10-66ee(d)(7) – Waterbury chose to provide some of its resident students at Brass City with certain of the services contained in their IEPs, Brass City would clearly be unable to claim reimbursement for such services as it would not have incurred any actual costs. Waterbury cannot, however, deduct the amount of such self-administered services from the actual costs that Brass City *did* incur – either in providing the student with other IEP services or by providing IEP services to other Waterbury students enrolled in Brass City. These are not interchangeable services; as noted, an IEP is an *individualized* education program comprised of expressly iterated components that are specifically designed for, and based upon the educational needs of, a particular student.

Therefore, for the reasons discussed herein, and as further articulated in Section V below, the State Board finds that Section 10-66ee(d)(7) of the Connecticut General Statutes requires Resident Districts to reimburse charter schools for the actual costs of providing to students who are residents of such district but are attending the charter school the special education and related services set forth in the respective students' IEP, with the understanding that such reimbursement is predicated upon the charter school's mandatory obligation to provide detailed documentation of such costs.

C. Reimbursement for Administrative and Planning Activities Costs

Brass City has stated in the Petition that the provision of special education and related services in accordance with applicable federal and state law requires many tasks in addition to direct instruction. Brass City details these tasks as:

> conducting assessments, administering interim benchmarks, and collecting data regarding students' responses to interventions and progress towards IEP goals; drafting mandatory IEP progress monitoring reports; planning time to modify grade-level curriculum and methods of instruction to ensure accessibility and alignment with students' individualized needs and accommodations; and preparing for and attending planning and placement team meetings (PPTs), including drafting IEPs and time spent providing prior written notice of PPT meetings and IEP decisions.

See Petition, p. 11. The Resident Districts have responded by arguing that they have the responsibility for the planning and placement process and that administrative and planning costs of the charter schools are duplicative and are not reimbursable.

It is indisputable that the IDEA and the corresponding Connecticut law imposes a number of obligations upon schools and school districts in addition to providing students with direct instruction pursuant to an IEP. These obligations include conducting both initial evaluations and reevaluations no less than every three years. See 34 C.F.R. §§300.300 – 300.311. There is also, of course, the drafting of a student's IEP, which the PPT must collaboratively update no less than annually. 34 C.F.R. §300.324(b)(i). The annual updating of a student's IEP is predicated upon a review of a student's progress on the goals and objectives contained in the student's then-current IEP. 34 C.F.R. §300.324(b). To ascertain such progress, it is incumbent upon service providers to collect data and document whether the child has mastered, made satisfactory progress on, or made limited progress on such goals and objectives. 34 C.F.R. §300.324(b)(1)(ii)(A). See also 34 C.F.R. §300.320(a). In the case of students attending charter schools, these service providers are those individuals whom the charter school has employed or contracted with in order to fulfill its statutory obligation to ensure that the special education and related services set forth in the student's IEP are being implemented. C.G.S. §10-66ee(d)(7). The information they chart and otherwise compile is then shared with, and considered by, the other members of the PPT, including the child's parents or guardians, in order to inform the Team's design of the student's updated IEP. 34 C.F.R. §300.320; 34 C.F.R. §300.324.

The service providers at the charter school the student attends are a requisite part of the PPT and, by extension, the drafting of the student's IEP. In fact, Section 10-66ee(d)(7) provides in relevant part that the Resident District shall "[h]old the planning and placement team meeting for such student and *shall invite representatives from the charter school to participate in such meeting*." Id. (emphasis added). This mandate comports with the IDEA's iteration of those individuals who comprise a student's PPT. 20 U.S.C. 1414(d)(1)(B). It is, therefore, both factually and legally insupportable for the Resident Districts to dismiss as unnecessary those duties and responsibilities of charter school personnel that are, by law, inextricably entwined with the provision of direct special education and related services to special education students who attend charter schools.

Obviously, charter schools cannot charge the costs of providing these non-direct-instruction services if they are not actually performing them. In other words, if the Resident District provides a school psychologist to administer psychoeducational evaluations or related assessments to a student, then the charter would have incurred no costs and would not be entitled to any payments. Similarly, if the Resident District assigns a special education teacher to conduct educational evaluations or speech pathologists or related-service providers to conduct the relevant evaluations, then there would be no basis for the charter school to demand reimbursement as it would not have incurred any costs.

It must also be noted that collecting data, conducting assessments, attending PPT meetings, and participating in the creation of the IEP are part and parcel of the job responsibilities for full-time instructional special education and related-service staff employed by Resident Districts. In other words, such staff members are not entitled to additional pay simply because they perform

these functions in addition to providing direct instruction. This would be equally true for full-time special education teaching and related-service staff at a charter school. Thus, if a charter employs a full-time special education or related-service staff member, then the charter school would not be entitled to reimbursement for the time spent by such individuals in these functions that are necessarily attendant to the provision of direct services to special education students. Instead, that would be subsumed into the staff member's full-time salary, which would be reimbursable to the extent that the staff member's role is to implement a student's IEP pursuant to Section 10-66ee(d)(7).

Brass City, however, has stated that it employs a part-time special education coordinator, and "that all of the coordinator's responsibilities are related to providing special education and related services which are essential functions necessary to maintaining legal compliance." Petition, p. 12. As this individual is performing duties that are mandated under both federal and state law, the hours expended upon these duties fall within the charter school's statutory requirement to ensure that students receive the special education and related services set forth in their respective IEPs and thus, are reimbursable costs. C.G.S. §10-66ee(d)(7). Similarly, if a service provider is retained on an hourly – as opposed to full-time -- basis and the hours expended include legally required administrative duties, including, but not limited to, attending PPT meetings, drafting progress reports on the student's progress on his or her IEP goals and objectives, conducting assessments, undertaking observations, or charting data for use in conjunction with Behavior Intervention Plans, such time would be reimbursable as it would be for the performance of legally required activities that are integral to the implementation of the student's IEP and his or her progress thereon. As discussed, however, in the case of salaried, full-time employees, these duties would be considered part of their duties and thus a component of their salary, and those hours would not be reimbursable over and above the employee's salary.

V. DECLARATORY RULINGS

A. Reimbursement of Actual Costs of Providing Special Education and Related Services

Based upon the reasons discussed herein, it is the position of the Connecticut State Board of Education that as a charter school is responsible for ensuring that the student receives the services mandated by the student's individualized education program, the logical reading of Section 10-66ee(d)(7) of the Connecticut General Statutes is that the payment to the charter school be calculated using the actual costs incurred by the charter school, not the Resident District's comparable costs. The special education and related services prescribed in a student's individualized education program are legally required to be provided. Furthermore, the IEP not only iterates the services that must by law be provided, but it also delineates the parameters of such services. As such, the actual costs of providing the mandated services contained in and limited by the four corners of the IEP must be deemed inherently reasonable. Thus, with respect to special education and related services provided by the charter school to students with disabilities pursuant to the IEPs created by the students' Planning and Placement Teams convened by the students' Resident Districts, the "reasonable cost of educating such student" to be paid to the charter school

are the actual costs incurred by the charter school, and not the costs the Resident District may incur in providing special education and related services to its own students.

In order to obtain reimbursement of their actual costs, charter schools are required to document in clear and unambiguous detail the actual costs it has incurred for the provision of such services on an individual student basis. Once it has done so and provided such documentation to Resident Districts, however, the Resident Districts are legally required under Section 10-66ee(d)(7) of the Connecticut General Statutes to reimburse to the charter schools the actual costs on a quarterly basis as set forth in statute.

B. **Reimbursement for Administrative and Planning Activities Costs**

Based upon the reasons discussed herein, it is the position of the Connecticut State Board of Education that as both federal and state law require certain administrative and planning activities attendant to the provision of direct special education and related service instruction, the reimbursement of costs by Resident Districts to charter schools for the provision of special education and related services pursuant to Section 10-66ee(d)(7) of the Connecticut General Statutes may include time expended on such administrative and planning activities in addition to the time spent on direct instruction, provided that they represent actual costs incurred by the charter school and are not part of the full-time duties of salaried employees, which salaries would already be reimbursable to the extent that the duties for which the employee is salaried includes the provision of the special education and related services set forth in the IEPs created by the Planning and Placement Teams convened by the students' Resident Districts, and provided that the charter school has documented in clear and unambiguous detail the actual costs it has incurred for such activities.

SO ORDERED,

CONNECTICUT STATE BOARD
OF EDUCATION

By_____
Erin Benham, Vice Chair
Connecticut State Board of
Education

CERTIFICATION

This is to certify that a copy of the foregoing Declaratory Ruling was sent via certified mail, return receipt requested, on the _____ day of May 2024, to the following:

Barbara Ruggiero, Ph.D.
Executive Director
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Verna D. Ruffin, Ed.D.
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By_____
Michael P. McKeon
Director of Legal & Governmental Affairs
Connecticut State Department of Education