

#347-11 (OAL Decision: Not yet available online)

CELEBRATE THE CHILDREN, *ET AL.* :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, DIVISION OF FINANCE :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioners in this consolidated case are five private schools for the handicapped (PSH) which have been approved by the New Jersey Department of Education (Department) to receive public school special education students on a tuition basis. Petitioners challenged the Department’s determination to restrict its 2008-2009 tuition rate to a 10% increase over its tentative per diem rate. Each school had established a tentative per diem tuition rate at the beginning of the 2008-2009 school year, but their costs per pupil escalated during the course of the year, resulting in final certified tuition rates that exceeded their tentative rates by more than 10 percent. The Department contends that its action in restricting the tuition rate was warranted by the failure of these private schools to timely comply with *N.J.A.C. 6A:23A-18.2(a)(2)*, which requires PSHs to notify sending districts in a timely manner when proposed tuition increases will exceed 10%. The petitioners contend that the Department has imposed requirements that are not clearly expressed in the regulatory language, and that they have complied with the letter and spirit of the regulation. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the case is ripe for summary decision; petitioners have met their burden of demonstrating that the Department’s determination to restrict their tuition rates was arbitrary, capricious or unreasonable as there is nothing in *N.J.A.C. 6A:23A-18.2(a)(2)* that advises that private schools must notify sending districts quarterly that year-to-date rates have increased by more than 10%; rather, the petitioners’ actions in waiting to “propose” a tuition increase until later in the school year were consistent with both the express requirements of *N.J.A.C. 6A:23A-18.2(a)(2)* and the goals of the regulation; such goals are not achieved when notice to the public schools of a “proposed” increase in the final tuition rate is based on premature or artificially inflated information; the Department has penalized the petitioning schools for violating what it perceives to be a rule of general application, and if it requires that these schools notify sending districts when year-to-date figures exceed 10% of the tentative rate, rather than only when they intend to actually “propose” a tuition increase, it needed to say so in clear and unambiguous language. Accordingly, the ALJ ordered summary decision in favor of petitioners.

Upon full consideration, the Commissioner concurred with the ALJ – for the reasons comprehensively presented in her decision – that summary decision is appropriately granted to the petitioners. The Initial Decision was adopted as the final decision in this matter, and respondent’s determination limiting the tuition increases allowably charged by the respective petitioners to 10% was reversed. Petitioners’ respective requests for tuition increases of between 11.61 and 29.43% for the 2008-2009 school year were granted.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

August 29, 2011

OAL DKT. NOS. EDU 7771-10, EDU 10870-10, EDU 11176-10, EDU 11792-10, and EDU 12102-10  
AGENCY DKT. NOS. 132-6/10, 510-9/10, 520-9/10, 583-9/10, and 582-9/10

**(CONSOLIDATED)**

CELEBRATE THE CHILDREN :

PETITIONER, :

V. :

NEW JERSEY STATE DEPARTMENT OF EDUCATION, DIVISION OF FINANCE :

RESPONDENT. :

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CREATIVE ACHIEVEMENT ACADEMY :

PETITIONER, :

V. :

NEW JERSEY STATE DEPARTMENT OF EDUCATION, DIVISION OF FINANCE :

RESPONDENT. :

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INNOVATIVE EDUCATION PROGRAMS, LLC, :

PETITIONER, :

V. :

NEW JERSEY STATE DEPARTMENT OF EDUCATION, DIVISION OF FINANCE :

RESPONDENT. :

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CEREBRAL PALSY CENTER OF BERGEN CO. INC. d/b/a THE CHILDREN'S THERAPY CENTER, :

PETITIONER, :

V. :

NEW JERSEY STATE DEPARTMENT :

COMMISSIONER OF EDUCATION

DECISION

OF EDUCATION, DIVISION OF FINANCE	:
<u>RESPONDENT.</u>	:
WILLOWGLEN ACADEMY-NEWTON,	:
PETITIONER,	:
V.	:
NEW JERSEY STATE DEPARTMENT	:
OF EDUCATION, DIVISION OF FINANCE	:
RESPONDENT.	:
<u>        </u>	:

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent sought and was granted an extension of time within which to file exceptions to the decision, and such exceptions were received in accordance with the extended timeline. These and petitioners' reply exceptions were fully considered by the Commissioner in reaching his determination herein.

Respondent's exceptions merely re-advance its arguments presented before the Administrative Law Judge (ALJ) below. As it is determined that all of these were fully considered and addressed by the ALJ in her decision, they will not be revisited here.

Upon full consideration, the Commissioner concurs with the ALJ – for the reasons comprehensively presented in her decision – that summary decision is appropriately granted to petitioners.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. Respondent's determination limiting the tuition increases allowably charged by the respective petitioners for the 2008-09 school year to 10 percent is reversed. Rather, Celebrate the Children's request for a tuition increase of 24.65 percent; Innovative Education's request for a tuition increase of 11.61 percent for its Saybrook program and 29.43 percent for its Krumbiegel

program; Creative Achievement Academy's request for a tuition increase of 15.81 percent; Willowglen Academy's request for a tuition increase of 12.93 and Children's Therapy Center's request for a tuition increase of 15.27 percent – all for the 2008-09 school year – are hereby granted.

IT IS SO ORDERED.<sup>1</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 29, 2011

Date of Mailing: August 30, 2011

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).