

BOARD OF EDUCATION OF THE :
NORTHERN HIGHLANDS REGIONAL :
HIGH SCHOOL DISTRICT, BERGEN COUNTY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF SADDLE RIVER, BERGEN COUNTY, :

RESPONDENT. :

_____ :

SYNOPSIS

Respondent has a sending-receiving relationship with petitioner, whereby Saddle River sends its students to Northern Highlands for grades nine through twelve. Petitioner’s appeal, filed in 2010, sought a tuition rate adjustment to cover the cost of a full-time aide for T.F. – a special education student from Saddle River who graduated at the end of the 2005-06 school year – and reimbursement for the cost of one-to-one instruction in English for G.L. – a special education student from Saddle River who is currently enrolled at Northern Highlands. Respondent filed a motion for summary decision, which was opposed by petitioner.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; pursuant to *N.J.A.C.* 6A:23A-17.1(f)(6), a receiving district must make a tuition-rate adjustment for a student enrolled in a special education class no later than the end of the second school year following the contract year, and *N.J.A.C.* 6A:3-1.3(i) requires that a petition of appeal be filed within 90 days from the end of that time period; petitioner’s appeal is clearly out of time as it relates to a tuition rate increase for T.F., who graduated in 2006; under the parties’ current send-receive agreement, Northern Highlands cannot charge Saddle River for G.L.’s one-to-one instruction in English because it is part of his educational program and not a related service. Accordingly, the ALJ granted respondent’s motion for summary decision and dismissed the petition.

Upon full consideration, the Commissioner concurred with the ALJ and adopted the Initial Decision as the final decision in this matter.

<p>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.</p>

OAL DKT. NO. EDU 7133-10
AGENCY DKT. NO. 118-6/10

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions – filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein. Respondent did not file reply exceptions.

Petitioner’s exceptions, in relevant part, essentially recast and reiterate its arguments advanced before the Administrative Law Judge (ALJ) below. In that it is determined that these were sufficiently considered and addressed in the ALJ’s decision, they will not be revisited here.

Upon a contemplative review, the Commissioner concurs with the ALJ that Summary Decision is appropriately granted to the respondent. In so determining, the Commissioner is in complete accord with the ALJ that the portion of the instant petition of appeal, filed in June 2010, which is seeking payment for special education student T.F.’s full-time aide for the 2003-04, 2004-05 and 2005-06 – some 4 years after this student graduated – must be dismissed because it was filed well outside the 90-day limitation period set forth in

N.J.A.C. 6A:3-1.3(i), and the record provides no reason whatsoever for relaxation of this rule.¹ With respect to that portion of the instant petition of appeal which seeks to charge respondent for the provision of one-on-one English instruction for special education student G.L. for the 2008-09 and 2009-10 school years, the record reflects that one-on-one instruction is how G.L. is required to receive his mandatory English credits necessary for graduation. The Commissioner agrees with the ALJ – for the reasons presented on pages 6-7 of his decision – that petitioner cannot charge for that instruction under its send-receive agreement with Saddle River.

Accordingly, the recommended decision of the OAL is adopted and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 26, 2011

Date of Mailing: September 28, 2011

¹ To the contrary, preventing litigants from “sitting on their rights” through their own negligence is one of the express purposes of *N.J.A.C.* 6A:3-1.3(i).

² 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).