

SB #44-01 and #4-02 (consolidated) and #14-02 (consolidated)

IN THE MATTER OF THE APPROVAL OF THE :
LEASE SUBMITTED PURSUANT TO :
N.J.S.A. 18A:20-4.2 BY THE STATE-OPERATED :
SCHOOL DISTRICT OF THE CITY OF NEWARK, :
ESSEX COUNTY, : STATE BOARD OF EDUCATION

and : DECISION ON MOTION

IN THE MATTER OF THE APPROVAL OF :
AMENDMENTS TO THE LEASE SUBMITTED :
PURSUANT TO N.J.S.A. 18A:20-4.2 BY THE :
STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF NEWARK. :

Decided by the Commissioner of Education, October 16, 2001

Decision on motion by the Commissioner of Education,
December 26, 2001

Decision on motions by the State Board of Education, February 6, 2002

Decided by the Commissioner of Education, February 11, 2002

Decision on motions by the State Board of Education, June 5, 2002

For the Appellant, Horowitz, Rubino & Patton (Curtis L. Michael, Esq., of
Counsel)

For the Respondent State-Operated School District of the City of Newark,
Essex County, McManimon & Scotland, L.L.C. (Leslie G. London,
Esq., of Counsel)

For the Respondent 570 Escuela Partners, L.L.C., Drinker Biddle &
Shanley (Kenneth J. Wilbur, Esq., of Counsel)

On June 5, 2002, the State Board of Education reconsidered its decision of February 6, 2002. In its February 6 decision, the State Board held that appellant Hartz Mountain Industries and its affiliate Hartz 707 Broad Limited Partnership (hereinafter “Hartz”) had the requisite standing to pursue its appeal of former Commissioner Gagliardi’s approval of a lease agreement with an option to purchase between 570 Escuela Partners and the State-operated School District of the City of Newark. On June 5, acting on a motion for reconsideration filed by the State-operated School District, the State Board found that because it was required to follow legal advice provided by the Attorney General’s Office, it was compelled by the formal agency advice that it had received from the Director of the Division of Law on May 10, 2002 to reverse its decision of February 6, 2002. Accordingly, the State Board dismissed the consolidated appeal in this matter.¹

By a motion filed on June 17, 2002, Hartz seeks reconsideration of the State Board’s decision of June 5 and has requested oral argument regarding that motion. The State-operated School District opposes the motion.

Initially, we grant Hartz’s motion for reconsideration. However, after considering the arguments of counsel, we again conclude that, as the head of an administrative agency, we are required to follow legal advice provided to us by the Attorney General’s Office. We also find, as we did in our decision of June 5, that the formal agency advice we received from the Director of the Division of Law compelled us to reverse our decision of February 6. Accordingly, we conclude that by our June 5 decision, we acted

¹ In our decision of June 5, we consolidated Hartz’s appeal from former Commissioner Gagliardi’s approval of the lease with its subsequent appeal from Commissioner Librera’s approval of amendments to the lease.

appropriately in dismissing the consolidated appeal. We deny Hartz's request for oral argument as not necessary for a fair determination of this matter.

August 7, 2002

Date of mailing _____