

EDU #1014-03
C # 622-03
SB # 48-03

SILVER FOX LEARNING CENTER, INC., :
ET AL., :

PETITIONERS-APPELLANTS, :

V. :

STATE-OPERATED SCHOOL DISTRICT OF :
THE CITY OF PATERSON, PASSAIC :
COUNTY; DR. ANNA DE MOLLI, ASSISTANT :
SUPERINTENDENT OF THE PATERSON :
PUBLIC SCHOOL DISTRICT; NEW JERSEY :
STATE DEPARTMENT OF HUMAN :
SERVICES; WILLIAM LIBRERA, NEW :
JERSEY COMMISSIONER OF EDUCATION; :
THE CITY OF PATERSON; AND FELIX :
ESPOSITO, IN HIS CAPACITY AS :
PATERSON CODE ENFORCEMENT :
OFFICIAL, :

STATE BOARD OF EDUCATION

DECISION

RESPONDENTS-RESPONDENTS. :

Decided by the Commissioner of Education, November 6, 2003

For the Petitioners-Appellants, Ronald T. Nagle, Esq.

For the Respondents-Respondents, Law Offices of Joseph J. Ryglicki
(Jack Gillman, Esq., of Counsel)

This appeal is from a decision by the Commissioner of Education which, adopting the Administrative Law Judge's Initial Decision, found that the appellant, Silver Fox Learning Center, Inc. (hereinafter "Silver Fox"), had failed to sustain its burden of

proving that it was in compliance with regulatory requirements so as to be considered an approved Abbott preschool during the period from September 1, 2001 through January 31, 2002. Silver Fox was approved as a collaborative preschool center in February 2002. However, it had been in operation since September 2001 without being approved by the State-operated School District of the City of Paterson (hereinafter "District") and the New Jersey Department of Education, and is seeking retroactive funding for the period from September 1, 2001 through January 31, 2002.

On appeal to the State Board, Silver Fox argues that it is entitled to retroactive funding since it was formed with the purpose of being an Abbott preschool and that it functioned in all respects as an Abbott preschool during the period at issue. It also contends that it had an understanding with the District that it was considered to be an Abbott preschool and that the District would provide funding once it worked out its budget for the 2001-2002 school year. Silver Fox also continues to challenge the jurisdiction of the Commissioner to decide the matter and asserts that it is entitled to have its contractual claims decided by Superior Court.

Initially, we concur with the Commissioner that the resolution of whether Silver Fox was operating as either an approved Abbott preschool or a de facto Abbott preschool during the period in question is controlled by the regulations governing the establishment of Abbott preschools and, as such, the Commissioner has the jurisdiction to decide the questions. After reviewing the record in the matter, we also agree with the Commissioner that Silver Fox has failed to demonstrate that it operated in compliance with the Abbott implementing regulations during the period at issue. Nor did Silver Fox demonstrate that it had a relationship with the District such that it should be considered

to be an Abbott preschool notwithstanding the fact that it did not have a contract with the District during the period at issue. In this respect, we conclude that, as expressed by the Commissioner:

It was presumptuous for Silver Fox to have assumed that, without an executed contract with the Paterson School District, simply by notifying the District of its intent to join the Paterson Early Childhood Education Collaborative and then proceeding to open a child care center under the auspices of the Department of Human Services that Silver Fox was automatically an Abbott preschool. To the extent that petitioners made such assumption, they did so at their own peril.

Commissioner's Decision, slip op. at 27-28.

Therefore, for the reasons expressed by the Commissioner, we affirm his decision in this matter.

April 7, 2004

Date of mailing _____