EDU #10065-95
C # 411-96
SB # 75-96

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| BOARD OF EDUCATION OF THE TOWNSHIP OF CHERRY HILL, CAMDEN COUNTY, | : | |
| PETITIONER-APPELLANT, | : | |
| V. | : | STATE BOARD OF EDUCATION |
| BOARD OF EDUCATION OF THE BOROUGH OF HADDONFIELD, CAMDEN COUNTY, | : | DECISION |
| RESPONDENT-RESPONDENT. | : | |

Decided by the Commissioner of Education, September 23, 1996

For the Petitioner-Appellant, Schwartz, Simon, Edelstein, Celso, & Kessler (Nathanya G. Simon, Esq., of Counsel)

For the Respondent-Respondent, Capehart & Scatchard (Joseph F. Betley, Esq., of Counsel)

This matter was initiated when the Board of Education of the Township of Cherry Hill (hereinafter "Cherry Hill" or "Cherry Hill Board") filed a petition of appeal with the Commissioner of Education seeking to invoke the Commissioner's jurisdiction under N.J.S.A. 18A:6-9[1] in order to obtain reimbursement from the Board of Education of the Borough of Haddonfield (hereinafter "Haddonfield" or "Haddonfield Board") for the costs of a residential placement for a special education student.

[1] N.J.S.A. 18A:6-9 provides that:

> The Commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the

The Cherry Hill Board had paid such costs for the period from June 3, 1993 through May 15, 1995 pursuant to a memorandum of understanding dated April 12, 1994 between the Cherry Hill Board and an attorney representing Dr. Lance Gooberman, the student's father. This memorandum terminated due process proceedings before the Office of Administrative Law ("OAL") which had been initiated by Dr. Gooberman pursuant to N.J.A.C. 6:28-2.7.[2] Dr. Gooberman had initiated such proceedings in order to contest a determination by Cherry Hill's child study team that an in-district placement, rather than the residential placement he had requested, was appropriate for his son and to challenge Cherry Hill's refusal to reimburse him for the costs he had incurred since June 1993 when he unilaterally placed his son in the residential treatment program.

Pursuant to the memorandum, Cherry Hill paid the costs for the residential placement through June 1995, at which time it was notified by the Haddonfield Board that Dr. Gooberman was domiciled in Haddonfield. The Haddonfield Board indicated that, as a result, it was assuming responsibility for payment.

Upon investigation, Cherry Hill discovered that Dr. Gooberman had actually moved to Haddonfield on April 29, 1994. The Cherry Hill Board concluded that it had therefore not been responsible for the payments it had made for the costs of the

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school laws, excepting those governing higher education, or under the rules of the state board or of the commissioner.

[2] N.J.A.C. 6:28-2.7 ensures that all pupils with educational disabilities are provided with an appropriate free education under the standards of the Individuals with Disabilities Education Act, see N.J.A.C. 6:28-1.1, by providing, in pertinent part, for a due process hearing at the parent's request with regard to the identification, evaluation, or educational placement of their child or after notice of a proposed or denied action. N.J.A.C. 6:28-2.7(a) and (b). The regulation further specifies the manner in which such hearings shall be conducted. N.J.A.C. 6:28-2.7(d) through (h). According to those procedures, if a conference conducted by the Department of Education does not result in a settlement, the matter is

residential placement after that date. Consequently, the Cherry Hill Board sought relief in the form of reimbursement from the Haddonfield Board by filing a petition with the Commissioner pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. §1401 et seq., and New Jersey special education law, N.J.S.A. 18A:46-1 et seq., N.J.S.A. 18A:46-14 and N.J.A.C. 6:28-1.1(d).

The matter was transmitted to the Office of Administrative Law as a contested case. Hence, in contrast to the due process proceedings that had resulted in the memorandum between Dr. Gooberman and the Cherry Hill Board, the Commissioner, rather than an Administrative Law Judge ("ALJ"), was responsible for making the final decision in the instant matter. Compare N.J.A.C. 1:1-18.6 (agency head makes final decisions in contested cases) with N.J.A.C. 1:6A-18.3 (decision of an ALJ in a special education matter is appealable directly to either Superior Court or Federal District Court).[3]

The ALJ issued an initial decision in the matter and transmitted it to the Commissioner for a final decision. The ALJ concluded that the matter was contractual in nature and recommended that the Commissioner dismiss it for lack of subject matter jurisdiction.

After considering the exceptions filed by the parties, the Commissioner adopted the ALJ's recommendation, finding that the Cherry Hill Board's claim involved primarily the interpretation of a contract over which the Superior Court, rather than this agency,

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transmitted to the Office of Administrative Law, which then has jurisdiction to issue a final binding decision. N.J.A.C. 1:6A-5.4.

[3] See N.J.A.C. 1:1-1.1 et seq. (setting forth the rules governing the procedural aspects of transmission to OAL, hearing, and the rendering of initial and final decisions in all contested cases in the Executive Branch of the State Government) and N.J.A.C. 1:6A-1.1 et seq. (setting forth the rules governing hearing

would have jurisdiction. He therefore dismissed the petition, and the Cherry Hill Board appealed.

We agree with the Commissioner that he did not have jurisdiction to entertain this matter. However, our determination is not based on the conclusion that the matter is contractual. In this respect, we stress that while the Commissioner does not have jurisdiction over claims that are purely contractual in nature, Salley v. Newark Bd. of Ed., 1984 S.L.D. 1714, he does have the authority under N.J.S.A. 18A:6-9 to resolve contractual matters as they relate to disputes arising under the education laws. E.g., Millstone Township Teachers Association v. Board of Education of the Township of Millstone, decided by the Commissioner, 93 N.J.A.R.2d (EDU) 802, appeal dismissed by the State Board, 95 N.J.A.R.2d (EDU) 254.

Nonetheless, careful examination of this matter reveals that this dispute is not one over which the Commissioner of Education has jurisdiction pursuant to N.J.S.A. 18A:6-9, and we reject Cherry Hill's arguments to the contrary.

The Cherry Hill Board argues that the question of which school district is obligated to pay for the special education program at issue during the relevant period is not contractual, but rather involves statutory interpretation concerning the authority of a board to enter a contract to provide a special education program to a student who is not a resident of the district. It contends that the responsibility to fund special education programs is allocated by statute and cannot be altered by agreement. It asserts that because the child's entitlement to a free education and the determination regarding which district is responsible for payment is contingent on the domicile of the child,

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and decision of matters arising out of the Special Education Program of the Department of Education

Cherry Hill was without authority to agree to pay the costs of the residential placement involved here once Dr. Gooberman moved to Haddonfield and was no longer a resident of Cherry Hill within the meaning of N.J.S.A. 18A:38-1. Cherry Hill therefore asserts that such portion of the agreement was ultra vires and is unenforceable as a matter of law. Finally, it contends that a "settlement agreement that violates the IDEA cannot stand." Appeal Brief, at 29.

Despite the circuitous arguments presented to us on behalf of the Cherry Hill Board, our review of its submissions indicates that this dispute is not a controversy arising under Title 18A over which the Commissioner has jurisdiction. As the Cherry Hill Board recognizes, the "agreement" in question was a settlement agreement intended to resolve due process proceedings initiated by Dr. Gooberman pursuant to N.J.A.C. 6:28-2.7 to effectuate his son's rights under the IDEA and our special education laws. In contrast to disputes which are subject to the Commissioner's jurisdiction pursuant to N.J.S.A. 18A:6-9, disputes involving the placement of a child who is entitled to special education and related services under the IDEA and New Jersey's special education laws are not subject to the Commissioner's jurisdiction. Rather, the procedures which apply to these matters are specifically designed to guarantee that this agency does not act as the decisionmaker. N.J.A.C. 1:6A-1 et seq. See, supra, n.3.

Under the applicable procedures, settlement of a dispute such as that initiated by Dr. Gooberman is accomplished by OAL and is not subject to review by the Commissioner or appeal to the State Board. See, supra, n.3. In that the agreement

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pursuant to N.J.A.C. 6:28 and implementing the IDEA).

which the Cherry Hill Board is seeking to set aside constitutes the settlement of due process proceedings, neither the Commissioner nor the State Board has jurisdiction.

The fact that the Cherry Hill Board points to various New Jersey statutes does not confer jurisdiction on us to grant the relief it seeks. See Rabinowitz v. New Jersey State Board of Education, et al., 550 F. Supp. 481 (D.N.J. 1982). Again, the substantive entitlements underlying the Cherry Hill Board's agreement with Dr. Gooberman are those conferred by the IDEA and New Jersey's special education statutes. As conceded by Cherry Hill, the validity of this settlement agreement must be judged under the IDEA. Appeal Brief, at 29. Furthermore, the question of whether the residential placement which Dr. Gooberman unilaterally made was the appropriate one is invariably implicated by any determination to set aside the agreement so as to hold Haddonfield responsible. Quite simply, it would be inappropriate in these circumstances for this agency to exercise jurisdiction in order to direct the Haddonfield Board to reimburse Cherry Hill for the costs of this residential placement. Cf. Roxbury Bd. of Ed. v. Milford Bd. of Ed., 283 N.J. Super. 505 (App. Div. 1995), certif. denied, __ N.J. __ (1996); D.K. v. Roseland Board of Education, and West Orange Board of Education, 903 F. Supp. 797 (D.N.J. 1995); Woods v. New Jersey Department of Education, et al., 823 F. Supp. 254 (D.N.J. 1993).

Therefore, for the reasons stated herein, the State Board of Education dismisses the petition.

Attorney exceptions are noted.

December 3, 1997

Date of mailing _____