

C # 194-03L
C # 252-03L
SB # 19-03

IN THE MATTER OF THE PETITION OF :
THE PASSAIC COUNTY ELKS : STATE BOARD OF EDUCATION
CEREBRAL PALSY TREATMENT CENTER. : DECISION

Decided by the Commissioner of Education, April 21, 2003

Decision on motion by the Commissioner of Education, May 19, 2003

For the Petitioner-Appellant, Fogarty & Hara, (Scott W. Carbone, Esq., of
counsel)

Petitioner in this case operates a private school for the handicapped and charges tuition to public school districts who send children to its center pursuant to regulations adopted by the State Board of Education. In a decision issued on July 7, 1999, the Commissioner of Education adopted an administrative law judge's determination that a lease agreement entered into between the petitioner and the Passaic County Elks Crippled Children's Committee was a transaction between related parties under N.J.A.C. 6:20-4.4(a)(45) and, consequently, that the Division of Finance had properly disallowed \$265,587 in rental costs in the school's tuition rate calculations that the petitioner had paid to the Crippled Children's Committee. On December 1, 1999, the State Board of Education affirmed the Commissioner's decision.

By a resolution adopted on February 3, 2003, petitioner amended its bylaws and constitution with the intent of structuring itself in such manner that petitioner and the

Crippled Children's Committee would not be considered to be related parties so that petitioner could include the rent it pays pursuant to its lease with the Committee in the tuition it charges the public school districts.

In April 2003, petitioner requested from the Commissioner of Education a declaratory ruling that petitioner may include the amount of the rent in the tuition it charges the public school districts.

In a letter decision dated April 21, 2003, the Commissioner determined pursuant to the discretionary authority granted him by N.J.A.C. 6A:3-2.1 that he would not entertain petitioner's request. In doing so, the Commissioner advised petitioner that, in the event that an audit by the Department of Education found that rent paid to the Committee could not be included in the tuition it charged notwithstanding petitioner's new arrangement, the appeals process would provide it with a mechanism by which it could seek redress.

By letter of April 29, 2003, petitioner requested that the Commissioner reconsider his determination.

On May 19, 2003, the Commissioner reaffirmed his prior decision, stating that while he understood petitioner's concerns, he remained unpersuaded that a declaratory ruling outside the regulatory framework governing tuition determinations was necessary or appropriate.

Petitioner then appealed to the State Board seeking reversal of the Commissioner's determination not to entertain its request for a declaratory ruling.

After reviewing petitioner's arguments, the State Board of Education affirms the Commissioner's decision. In doing so, we stress that, pursuant to N.J.A.C. 6A:3-2.1,

the determination as to whether to entertain a petition for a declaratory ruling lies within the sole discretion of the Commissioner. In addition, a request for a declaratory ruling must reflect adverse positions on the statute or rule in question. N.J.A.C. 6A:3-2.1(a)1. In this instance, petitioner's position is the only one that has been presented. Hence, in the absence of any indication that the Commissioner has not properly exercised his discretion, we affirm his determination that it is neither necessary nor appropriate to issue a declaratory ruling in this instance.

August 6, 2003

Date of mailing _____