#100-07 (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu01169-06_1.html)

GOLDEN DOOR CHARTER SCHOOL,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF JERSEY CITY, HUDSON COUNTY,	:	
RESPONDENT.	:	

SYNOPSIS

Golden Door Charter School sought payment for the cost of home instruction delivered by an approved private agency to a disabled student whose district of residence was Jersey City. The Charter School purported that such instruction constituted placement in a private school for the disabled, so that under the charter school law, and in accordance with the parties' signed contract, Jersey City was responsible for its costs.

The ALJ found that Jersey City was placing form over substance in distinguishing between home instruction and enrollment in a private school so as to preclude payment for the former under a strict reading of the statute. The ALJ reasoned that: the student in question needed home instruction for a free and appropriate public education; the "Naples Act" permitted use of nonapproved schools; and Jersey City and the charter school were "one and the same" for purposes of educating resident students; therefore, Jersey City was responsible for payment.

The Commissioner rejected the Initial Decision in its entirety, holding that Jersey City had no obligation to pay the costs in question. The Commissioner found that: 1) the district of residence and a charter school are distinct entities; 2) the plain language of statute requires charter schools – which receive State, local and federal monies from the district of residence to support each student attending the charter school – to fund the costs of educating handicapped students without further contribution from the district of residence, except where a disabled student is enrolled in a private day or residential school; 3) applicable law clearly distinguishes between services provided by approved clinics/agencies and placement in an approved private school, and there is no dispute that the student in question received services from an approved agency but was not placed in a private school in accordance with rule; 4) the "Naples Act" does not pertain to this matter; and 5) no contract existed between the parties because there was no placement in an approved private school for the disabled, as *N.J.A.C.* 6A:23-4.4(a)13 requires for use of the mandated Department of Education tuition contract form. The Petition was dismissed.

March 15, 2007

OAL DKT. NO. EDU 1169-06
AGENCY DKT. NO. 352-12/05

GOLDEN DOOR CHARTER SCHOOL,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF JERSEY CITY, HUDSON COUNTY,	:	
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the Jersey City School District's exceptions thereto, filed pursuant to *N.J.A.C.* 1:1-18.4. The Charter School did not reply to the District's exceptions.

On exception, Jersey City (the District) contends that the Administrative Law Judge (ALJ) erred in concluding it was responsible for the home instruction costs at issue in this matter, applying an incorrect legal analysis and ignoring the clear language of statute. The District argues that the ALJ: 1) misconstrued the essential nature of public school districts and charter schools by finding them to be a unified whole rather than distinct, independent entities as established by the Legislature; 2) improperly transferred the general obligation of charter schools to provide their students with a free and appropriate public education to the school districts in which the students reside; and 3) ignored the funding provisions of the charter school law, which clearly and unequivocally specify the fiscal obligations of the students' public school district(s) of residence. According to the District, had the ALJ correctly read the operative law, she would have recognized that a charter

school is an independent entity, supported by public school districts to the extent that such districts are required to forward to the charter school the specified State, local and federal monies associated with resident students attending the school, but fully responsible for the costs of all services provided to students except those expressly assigned to a student's public school district of residence. Had the ALJ understood this, the District opines, she would then have concluded (correctly) that costs associated with the provision of home instruction to a disabled student remain the responsibility of the charter school, since the statute assigns fiscal responsibility to the district of residence only where such a student is placed in a private day or residential school. (District's Exceptions at 1-6)

Upon review, the Commissioner must concur with the District that the analysis and conclusions of the ALJ are in error, and must, accordingly, be rejected in their entirety.

Initially, the Commissioner concurs with the District that the ALJ has fundamentally misunderstood the relationship between a charter school and the public school district(s) from which its students originate. As the District correctly asserts, notwithstanding that a charter school is part of New Jersey's system of free public education, a charter school and the schools of a district do not "comprise the local school district," nor are the charter school and the school district "one and the same" as stated by the ALJ (Initial Decision at 8-9). Rather, a charter school is a distinct body corporate operated by its own board of trustees independent of any public school district. *N.J.S.A.* 18A:36A-3a, 18A:36A-6. Additionally, although its funding substantially derives from payments by its students' districts of residence – i.e., pursuant to *N.J.S.A.* 18A:36A-12b, the district of residence is required to turn over to the charter school 90% of the State and local monies supporting each student's public education, plus associated State

categorical and federal aid[1] [2] – such schema does nothing more than create a "flow through" mechanism by which the public funds associated with a student follow the student from the district of residence to the charter school; it does not create an identity between the district and the charter school, nor does it create a co-obligation on the part of the district to support the student's education beyond provision of the specified funds, except as expressly noted.

Moreover, the legislation creating charter schools is clear and unequivocal with respect to both a charter school's independent obligation to educate handicapped students[3] and the limited responsibility of the students' districts of residence for the additional costs of so doing:

> A charter school shall comply with the provisions of chapter 46 of Title 18A of the New Jersey Statutes concerning the provision of services to handicapped students; except that the fiscal responsibility for any student currently enrolled in or determined to require a private day or residential school shall remain with the district of residence. *N.J.S.A.* 18A:36A-11b.

Thus, there can be no question that the Legislature intended costs associated with the provision of special education services to charter school students – other than placement in private day or residential schools – to be borne by the charter school and funded from its general operating budget. Neither here nor elsewhere has the Legislature required – or provided a mechanism for – charging the excess costs of such services to the district of residence.[4]

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[1] Under specified circumstances, these amounts are supplemented by additional State payments as set forth at *N.J.S.A.* 18A:36A-12c through 18A:36A-12e. A charter school may also solicit and receive gifts or grants for school purposes. *N.J.S.A.* 18A:36A-6g.

[2] See also *N.J.A.C.* 6A:23-9.1 and 9.5.

[3] See also *N.J.A.C.* 6A:11-4.8.

[4] Indeed, the Charter School itself acknowledges that when a disabled student is placed in a *public* institution, the charter school bears the full cost of such placement notwithstanding that such cost may be – and generally is – in excess of the funds received from the student's district of residence pursuant to *N.J.S.A.* 18A:36A-12b. (Pre-Hearing Brief at 4-5)

Further, the Legislature was equally specific in limiting the stated exception to private *day or residential schools*, so that – in addition to misconstruing the relationship between a charter school and an enrolled student's district of residence – the ALJ has also erred in construing home instruction services delivered through a private provider as a "school placement" within the meaning of the statute.[5]

In enumerating the manner in which the facilities and programs of special education may be provided, *N.J.S.A.* 18A:46-14 clearly distinguishes between "privately operated day classes," 18A:46-14g, and "individual instruction at home or in school," 18A:46-14h. In implementing State and federal requirements for the education of disabled students, rules and regulations of the State Board of Education specifically list "home instruction," delineated at *N.J.A.C.* 6A:14-4.8,[6] as a *service* for which public school entities – including charter schools, by definition of "district board of education" at *N.J.A.C.* 6A:14-1.3 – may contract with "private clinics and agencies approved by the Department of Education", among other entities. *N.J.A.C.* 6A:14-5.1(c)1iv. These same rules clearly distinguish such *clinics and agencies*, which are approved by the Department pursuant to *N.J.A.C.* 6A:14-5.2 for the delivery of *services*, from *private schools for the disabled*, which are approved and governed pursuant to *N.J.A.C.* 6A:14-7.1 *et seq.*, and in which disabled public school students may be *placed* in accordance with specific requirements set forth at *N.J.A.C.* 6A:14-7.5(b).

There is no dispute that the home instruction at issue in this matter was delivered by the Charter School through the services of the Lovaas Institute for Early

[5] In so concluding, the ALJ appears to have accepted the Charter School's argument that the only pertinent distinction for purposes of characterizing special education programs is between public and private providers. (Pre-Hearing Brief at 4-5)

[6] This citation refers to current rules; however, it – along with all other regulations of the State Board of Education referenced within this decision – was substantially the same in content, and codified at the same location, during the period at issue in this matter.

Intervention as an "approved clinic or agency," and not through the student's enrollment in a private school.[7] In light of the clear statutory and regulatory distinctions noted above, the Commissioner, therefore, cannot agree with the ALJ that the District's reliance on the plain wording of *N.J.S.A.* 18A:36A-11b (enrollment in a "private day or residential school") improperly focuses on the "form" of A.K.'s education rather than its "substance." (Initial Decision at 8)[8] To the contrary, as noted by the District, where the language of a statute is clear and unambiguous on its face, it must be read according to the ordinary meaning of its terms and may not be re-written through judicial application so as to include language omitted by the Legislature. (Pre-Hearing Brief at 7 and Exceptions at 5, both citing *State v. S.R.*, 175 N.J. 23, 31 (2002); *Merlino v. Midland Park Borough*, 172 N.J. 1, 9 (2002); and *DiProspero v. Penn*, 183 N.J. 477, 492 (2005))[9] This is particularly so where, as here, the law's plain language is fully consonant with the body of implementing rules and regulations promulgated by the State agency with jurisdiction over it.[10]

Finally, the Commissioner cannot accept the ALJ's reasoning that the District has an additional fiscal obligation because a student from Jersey City needed home instruction services in order to receive a "free and appropriate public education" and got

[7] See also the program recommendation for A.K. (Exhibit J-2), which lists the Charter School as the locus of enrollment and "home" as the locus of instruction.

[8] Again, the ALJ appears to concur with the Charter School that the location of A.K.'s education – at home rather than in a classroom – should not preclude it from being funded by the District, since A.K. receives his entire education through home instruction. (Pre-Hearing Brief at 5-6)

[9] See also *Rose Drabich v. Board of Education of the Township of Hillsborough, Somerset County*, decided by the State Board of Education August 4, 1993, appeal dismissed by Appellate Division December 15, 1993; and *Board of Education of the Township of Fairfield, Cumberland County v. Robert Ench et al.*, decided by the State Board of Education August 2, 2000. In both instances, the State Board rejected the Commissioner's attempt to impute meaning to statutes beyond their plain language when such language was clear on its face.

[10] The Commissioner here notes that reading the statute in accord with its plain language does not, as contended by the Charter School, relieve the District of all responsibility for A.K.'s education (Petition of Appeal at 5); to the contrary, it requires the District to support A.K. and all other enrolled resident students in accordance with *N.J.S.A.* 18A:36A-12b and its implementing rules, and there is no dispute that the District has done so.

them from "the only available and appropriate provider" as permitted by the "Naples Act," *N.J.S.A.* 18A:46-14. (Initial Decision at 8) First, neither the Commissioner – nor the ALJ in the context of a school law dispute heard pursuant to *N.J.S.A.* 18A:6-9 – has the authority to reach conclusions about the appropriateness of A.K.'s individualized education program (IEP) or the manner in which it is being implemented.[11] Moreover, it is clear from the law's plain language and legislative history that the "Naples Act"[12] – which permits the placement of a disabled student in the academic program of an accredited, nonsectarian private school not specifically approved as a school for the disabled – has no applicability in the present situation, where the student's education was provided through services delivered by an approved clinic/agency and not through placement in an unapproved private school.[13]

Thus, it is clear that under the school laws of the State, there is no basis for concluding, as did the ALJ, that the Jersey City School District is obliged to pay the cost of the home instruction provided to A.K. through the Lovaas Institute for Early Intervention. It is equally clear that any attempt to impose a more expansive fiscal responsibility on the district(s) of residence of charter school students must be addressed to the Legislature as a matter of State policy, rather than to the Commissioner of Education in the context of contested case adjudication.

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[11] Determinations of this type are, by law, made by a charter school for its enrolled disabled students; there is no provision for their dispute by a student's district of residence, and the District does not attempt to dispute them here. On Commissioner jurisdiction, see *East Brunswick Bd. of Educ. v. New Jersey State Board of Education*, 1982-83 *Education of the Handicapped Law Report*, Dec. 554:122 (Dist. Ct. of New Jersey, July 7, 1982); *Bd. of Ed. of Lenape Reg. High Sch. District, Burlington County v. New Jersey State Department of Education, Office of Special Education Programs*, decided by the Commissioner March 16, 2006; *N.J.A.C.* 6A:14-2.7; and *N.J.A.C.* 1:6A-1.1 *et seq*.

[12] *P.L.* 1989, *c.* 152; see also Assembly Education Committee Statement, Assembly Bill No. 3122.

[13] No representation has been made on the present record that the Charter School complied with the standards and procedures of *N.J.A.C.* 6A:14-6.5 as required for "Naples Act" placements, nor has the School contended that the Act is applicable herein.

In so holding, the Commissioner is mindful that the Charter School has also asserted a contractual claim which was not addressed by the ALJ in view of her recommendation that relief be awarded on the basis of school law. The Commissioner finds, however, that no contract exists under the factual circumstances of this matter, since there was no placement of a public school student in an approved private school for the disabled, as the document in question represents on its face (Exhibit J-3), and as *N.J.A.C.* 6A:23-4.4(a)13 requires as a condition precedent for use of the mandated Department of Education tuition contract form.

Accordingly, for the reasons set forth herein, the Initial Decision of the OAL is rejected and the Petition of Appeal is dismissed.

IT IS SO ORDERED.[14]

COMMISSIONER OF EDUCATION

Date of Decision: March 15, 2007
Date of Mailing: March 15, 2007

[14]This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq*.