

BOARD OF EDUCATION OF THE TOWNSHIP :  
OF LAKEWOOD, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

DEPARTMENT OF HUMAN SERVICES, : DECISION  
DIVISION OF MEDICAL ASSISTANCE AND :  
HEALTH SERVICES; DEPARTMENT OF :  
EDUCATION; AND DEPARTMENT OF :  
TREASURY, :

RESPONDENTS. :

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SYNOPSIS

Petitioning Board of Education (Lakewood) sought Medicaid reimbursement for special education students who have been parentally placed in private schools. The petition originally sought relief exclusively through the Department of Education, which raised jurisdictional questions. The petition was then withdrawn and filed in the Appellate Division of Superior Court, naming the three respondents herein. The court remanded the matters for hearing at the OAL, where they were consolidated and predominant interest was established in the Department of Human Services. The record before the Commissioner includes the Initial Decision of the OAL and the Final Agency Decision of the Department of Human Services.

The ALJ identified the core question of law in this matter as the interplay of the Individuals with Disabilities Education Improvement Act (IDEIA) and a provision of the Medicare Catastrophic Coverage Act of 1988 (42 U.S.C.A. § 1396b(c)), and found that: prior to 1988, Medicaid did not reimburse special education services because they were covered under the IDEIA; the Medicaid amendment of 1988 allowed reimbursement for certain medically necessary services pursuant to 42 U.S.C.A. § 1396b(c), but this statute does not separately address Medicaid-eligible privately placed students; and there is little reason to believe that Congress equalized treatment of privately placed students with publically placed students for Medicaid purposes without any special mention of this issue. Accordingly, the ALJ granted the respondents' motion for summary judgment, denied petitioner's motion for partial summary decision, and dismissed the petition.

The Director of the Department of Human Services, Division of Medical Assistance and Health Services, reviewed the record of this matter including the Initial Decision of the OAL, petitioner's exceptions and respondents' reply thereto, and determined to adopt the findings, conclusions and recommended decision of the ALJ in their entirety as the Final Agency Decision.

Upon careful review and consideration, the Commissioner determined that there are no remaining issues under the jurisdictional purview of the Commissioner of Education. Accordingly, the petition of appeal was dismissed.

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| This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner. |
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OAL DKT. NOS. HMA 888-08, EDU 889-08 and TPP 2462-08 (consolidated)  
AGENCY DKT. NO. 80-3/07

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This matter involves a consolidated action that stemmed from a petition originally filed with the Department of Education in which Petitioner sought Medicaid reimbursement for special education students who have been parentally placed in private schools. The original petition was withdrawn because of potential jurisdictional questions. Petitioner then filed an appeal in the Superior Court of New Jersey, Appellate Division, against the Department of Human Services, Division of Medical Assistance and Health Services; the Department of Education; and the Department of Treasury seeking similar relief. The Appellate Division remanded the matters to the respective agencies for a hearing at the Office of Administrative Law (OAL). On remand, the petitions were consolidated, and the parties agreed that the Department of Human Services, Division of Medical Assistance and Health Services, has predominant interest.

The record of this matter, which includes the Initial Decision of the OAL, the Petitioner's exceptions to the Initial Decision, the Respondents' joint reply to the Petitioner's exceptions, and the final decision of the Division of Medical Assistance and Health Services, has

been reviewed. There were no separate exceptions filed with the Commissioner of Education. Upon such review, the Commissioner has determined that there are no remaining issues under the jurisdictional purview of the Commissioner of Education.

Accordingly, the petition of appeal is dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: July 15, 2010

Date of Mailing: July 15, 2010

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\* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.