179-99

BOARD OF EDUCATION OF THE BOROUGH OF SPOTSWOOD, MIDDLESEX COUNTY,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH OF MILLTOWN, MIDDLESEX COUNTY,	:	DECISION
RESPONDENT.	:	
	:	

SYNOPSIS

Petitioning Board alleged respondent Board failed to make tuition payments in accordance with their sending-receiving relationship. In cross-petition, respondent challenged petitioner's tuition calculations. Original petition and cross-petition issues were resolved between the parties. Remaining issues were the proper method of calculation for building use charges as a component of tuition, the correct amount of tuition due for certain school years and for which years building use charges might be applied.

ALJ granted petitioner's motion for summary decision and denied respondent's cross-motion for summary decision. ALJ noted the terms of the contract were dictated by regulation and the provisions were pre-printed on a form prepared by the Commissioner and required to be used by the parties. Moreover, ALJ determined that petitioner sought only to be compensated for the services it provided in an amount equal to its actual per pupil costs and it was not unreasonable to expect respondent to pay the full cost of educating its own students. ALJ found respondent suffered no prejudice whatsoever from the omission of the building use charge in the estimated calculations since respondent had the time value of the additional monies.

Commissioner adopted findings and determination in initial decision as his own, including the approval of the parties' settlement agreement with respect to certain issues raised by the petition.

June 7, 1999

BOARD OF EDUCATION OF THE BOROUGH OF SPOTSWOOD, MIDDLESEX COUNTY,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH OF MILLTOWN, MIDDLESEX COUNTY,	:	DECISION
RESPONDENT.	:	

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. The exceptions filed by respondent Board of Education of the Borough of Milltown (hereinafter, "Milltown") and the reply of petitioner Board of Education of the Borough of Spotswood (hereinafter, "Spotswood") were submitted in accordance with *N.J.A.C.* 1:1-18.4.

Milltown initially excepts to the Administrative Law Judge's (ALJ) finding that the contract(s) signed by the parties "mandated the inclusion of a building use charge in the parties' tuition agreement, at page 9 of [the initial] decision." (Milltown's Exceptions at p. 1) Milltown argues that it was erroneous for the ALJ to conclude that the language in the contract indicating that Spotswood "will charge" the sending district for underestimated costs should supersede "the practice and conduct of Spotswood in omitting the building use charge***." (*Id.* at p. 2) Rather, Milltown maintains that this repayment provision

> ***relates to those component elements of the initial tuition identified and contained in the estimated tuition rate and not to

> additional components not even identified in the estimated rate charge.*** (*Id.)*

Milltown reasons that the ALJ's broadening of Spotswood's legal ability to charge for components which were not identified in the tentative tuition charge violates elementary contract law principles. (*Id.*) In this regard, Milltown argues that the parties' failure to include a category for building use charges within tuition calculations "was a significant omission," and Spotswood should, therefore, be estopped from later adding this charge. (*Id.* at p. 3)

Milltown next asserts that the ALJ improperly dismissed, as nonmaterial, the issue of whether Spotswood's omission of the building use charges in its estimated costs was intentional. (*Id.* at p. 4) Here, it underscores that the parties' stipulations did not include facts as to Spotswood's intention with regard to these charges. Milltown argues that

> ***[i]f Spotswood in fact deliberately omitted the building use charge from its initial tuition calculation in order to entice Milltown to continue its sending/receiving relationship based upon misrepresented and understated tuition figures, the state of mind of Spotswood was a relevant and material issue which should have legally compelled a hearing.*** (*Id.* at p. 4)

Thus, Milltown reasons that the ALJ's finding at page nine of the initial decision that such intent was actually without consequence in this matter is erroneous. It asserts, to the contrary, that its estoppel argument would be strengthened by a finding that Spotswood deliberately misrepresented its estimated costs. (*Id.*)

Finally, Milltown contends that the ALJ improperly found that the mandatory contractual language supersedes the permissive language found in the regulations at *N.J.A.C.* 6:20-3.1(e)4 with respect to a receiving district's authority to charge a sending district for underestimated costs. Milltown argues that, as a matter of public policy, a contract should not modify the terms of the administrative code. (*Id.* at p. 7)

In its reply, Spotswood counters that it should not be estopped from seeking payment for the building use charges at issue, underscoring that equitable estoppel is rarely applied to public bodies, so as not to frustrate legislative policy. (Spotswood's Reply at p. 5) Spotswood also argues that the application of equitable estoppel requires a finding that Milltown reasonably relied, to its prejudice, on Spotswood's conduct, a standard which does not apply herein. (*Id.* at p. 6) Milltown does not allege, according to Spotswood, that Spotswood took any action which would form the basis of an estoppel argument. To the extent Spotswood was silent on the issue of building use charges, and its silence might form the basis of an estoppel argument, Spotswood argues:

> ***There is no duty imposed by the sending-receiving tuition statutes or regulations that required Spotswood to identify with specificity the items comprising the tentative tuition charge Milltown agreed to pay. Indeed, the very designation of the tuition charge as *tentative* is inconsistent with such a duty. (*Id.*; emphasis in text)

Moreover, Spotswood warrants that there is nothing in the Stipulated Set of Facts to support Milltown's assertion that it has suffered or changed its course of conduct based on Spotswood's action or inaction. (*Id.* at p. 7)

With respect to Milltown's contention that the ALJ improperly dismissed its argument that Spotswood's omission of the building use charge in its estimated tuition rates was a deliberate misrepresentation, Spotswood argues that Milltown's Cross-Petition never raised such an allegation; neither was the allegation raised at the prehearing conference. Further, since the allegation was not contained in the Stipulation of Facts, Spotswood urges that it cannot now form the basis of an exception. (*Id.* at p. 11) Spotswood views Milltown's claims in this regard as "unsubstantiated and unsworn assertions ***" which cannot defeat a motion for summary judgment. (*Id.* at pp. 11-12) Since Spotswood maintains that equitable estoppel is inapplicable, it concludes that Milltown's "intent" claim is legally immaterial.

Finally, Spotswood counters that the initial decision does not permit the parties' tuition contracts to modify the New Jersey Administrative Code, as Milltown so urges, stating:

> It is irrelevant that Spotswood is not required by law to charge Milltown the difference between the tuition Milltown paid and the correct tuition amount based upon actual costs per pupil. There is nothing in the regulatory scheme that prohibits Spotswood from collecting proper tuition amounts for Milltown's students. *** A sending district may be required by the receiving district to pay tuition charges up to the actual cost per pupil certified by the Commissioner of Education. The tuition contracts memorialized this arrangement.*** (*Id.* at p. 15)

Spotswood contends that, while the law requires districts in sending-receiving relationships to negotiate a tentative tuition charge, it does not specify the components of that charge. Nor does the law compel a receiving district to set the highest estimated tuition charge possible. (*Id.* at p. 16) Thus, Spotswood concludes that Milltown has underpaid its tuition, and now seeks a windfall. (*Id.* at p. 15)

Upon careful and independent review, the Commissioner determines to affirm the initial decision of the ALJ, with amplification as set forth herein. Initially, the Commissioner notes that a tentative tuition charge shall be established by written contractual agreement between a receiving district board of education and a sending district board of education; the tentative charge shall equal the district's estimated cost per pupil for the ensuing year. *N.J.A.C.* 6:20-3.1(e). Additionally, the pertinent regulations permit, but do not require, a receiving district to charge a sending district for either all or part of the money owed when it is determined that the tentative charge established by written contractual agreement was *less* than the actual cost per pupil during the school year. *N.J.A.C.* 6:20-3.1(e)4.

On a form prepared by the Commissioner, *N.J.A.C.* 6:20-3.1(e), the parties herein agreed that, in the event it is determined that the tentative tuition charge was less than the actual cost per pupil, as certified by the Commissioner, Spotswood *will charge* Milltown in the third year

following the contract year, the amount owed, and Milltown *will pay* the full amount in accordance with a specified payment schedule. (Initial Decision at pp. 5-6, 9) As the ALJ noted, the contract permits the parties the option to check the second box under paragraph 4b, indicating that a sending district *would not* be charged with any tuition differential, *or* to insert language beside and/or under the third box of paragraph 4b, which provides for repayment of *part of* the money owed. (*Id.* at p. 6) However, in the contracts at issue, the third box was checked and Milltown agreed it "will pay" the full amount in two equal payments.[1] (Exhibits 3 and 5[2]) The Commissioner, therefore, rejects Milltown's assertion that the initial decision signifies that the terms of the contract supersede the administrative code. Clearly, the applicable regulations *permit* Spotswood to forego charging Milltown where tentative costs are found to be underestimated; the parties, however, agreed to terms which provided otherwise.

As for Milltown's contention that Spotswood should now be estopped from including in its tuition charge a component expense which had not been included in its tuition calculations for the 1994-95, 1995-96, 1996-97 and 1997-98 school years, the Commissioner recognizes that

> Equitable estoppel is generally defined as "the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to *change his position for the worse*, and who on his part acquires some corresponding right, either of property, of contract, or of remedy." *Miller v. Teachers' Pension & Annuity Fund*, 179 *N.J. Super*. 473, 476 (App. Div.), *certif. denied* 88 *N.J.* 502 (1981). (emphasis added)

[1] It is herein noted that, for the 1995-96 school year, the parties signed an agreement which provided that the amount owed would be paid as follows: "50% Spetember (sic) 1998 & February 1999." (Exhibit 3) Although this language may be read to provide only for a 50% recoupment for Spotswood, Milltown never asserts that the language should be so read, and never disputes the ALJ's interpretation on page nine of the initial decision that there would be a 50% payment in September of 1998 *and* a 50% payment in February 1999.

[2] The tuition contracts for Milltown's neurologically impaired students are slightly different from those for the students in grades 9-12. There, the repayment language and options for repayment are found at paragraph 4d.

Although Milltown asserts that it was entitled to reasonably rely upon the absence of a building use charge as a component of the tuition (Milltown's Exceptions at p. 2), nowhere does Milltown identify *how* it was harmed by such reliance, or how it "changed its position for the worse" by relying upon the absence of building use charges in prior calculations. In this regard, as the ALJ properly stated, "***respondent has suffered no prejudice whatsoever from the omission of the building use charge in the estimated calculations. As noted, respondent has had the time value of the additional monies." (Initial Decision at p. 10) Under these circumstances, the Commissioner, like the ALJ, finds no cause to invoke principles of equitable estoppel, or to compel further fact-finding with respect to Milltown's claim that Spotswood deliberately omitted the building use charges from its calculations.

Accordingly, respondent's cross-petition is dismissed for the reasons expressed therein and amplified above. Additionally, the parties' settlement agreement, incorporated therein, is deemed a final decision with respect to those issues raised by the Petition of Appeal, pursuant to *N.J.A.C.* 1:1-19.1, except that said agreement shall not be construed to confer jurisdiction upon the Commissioner with respect to any matter he would not otherwise maintain the authority to review and adjudicate. [3]

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

June 7, 1999

[3] This decision, as the Commissioner's final determination in the instant matter, 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.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.