

Y.A.L.E. SCHOOL NORTH, INC., :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, OFFICE OF :  
COMPLIANCE INVESTIGATION, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioning private school for the disabled appealed the Department’s determination to disallow certain pension costs within the tuition rate charged to public school districts during the 2001-2002 and 2002-03 school years, the first as the result of an audit and the second as a prospective directive. The school contended that the costs at issue, which represented employer contributions to the pensions of certain employees over and above the level of contributions made on behalf of all others, were not a fringe benefit, but a legitimate means, acceptable under federal tax law, of compensating higher-paid employees for the proportionally smaller value of their social security payments.

The ALJ recommended dismissal of the petition, concurring with the Department that the disputed costs were properly disallowed under applicable State Board of Education rules for determining private school tuition charged to public school districts. The ALJ found retirement plans to be a fringe benefit within the meaning of the controlling rules, so that petitioner’s pension plan was subject to the rule requiring “equitable distribution” and failed to meet that standard because it had the effect of favoring a few select employees over all others.

The Commissioner adopted the findings and conclusions of the Initial Decision and dismissed the Petition of Appeal.

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.

OAL DKT. NO. EDU 4356-04  
AGENCY DKT. NO. 105-3/04

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Pursuant to *N.J.A.C.* 1:1-18.4, petitioner filed exceptions to which respondent (the Department) duly replied.

In its exceptions, petitioner urges the Commissioner to reject the Initial Decision in its entirety. Arguments on exception primarily take issue with the Administrative Law Judge’s (ALJ) conclusion that its pension plan, although permissible under the Employment Retirement Income Security Act and the Internal Revenue Code, did not reflect an “equitable standard of distribution” satisfying the requirements of *N.J.A.C.* 6A:23-4.5(a)23(i) because it provided for larger employer contributions to the pensions of certain highly paid employees than to the remainder. Petitioner contends that, in reaching this conclusion, the ALJ confused “equitable” with “equal,” erroneously rejecting petitioner’s plan because it did not treat all employees exactly alike, when he should have accepted it as a just means of compensating higher-income employees for the smaller proportional value of their employer pension contributions; according to petitioner, by effectively precluding fringe benefits that recognize the

value of employees based on the nature and extent of their duties, the ALJ's interpretation of *N.J.A.C. 6A:23-4.5(a)23(i)* will "significantly undermine the ability of private schools for the disabled to attract and maintain capable and experienced supervisory and administrative personnel\*\*\*." (Petitioner's Exceptions at 2-4, quotation at 4) Additionally, petitioner asks for an explicit legal finding that its pension plan satisfies the requirements of *N.J.A.C. 6A:23-4.5(a)31*, a conclusion which, petitioner contends, the ALJ inferred but did not expressly state. (*Id.* At 2)

In reply, the Department contends that a finding with respect to *N.J.A.C. 6A:23-4.5(a)31* is immaterial, since petitioner has failed to satisfy the conditions of *N.J.A.C. 6A:23-4.5(a)23(i)*, and compliance with both is necessary in order for the disputed costs to be allowable. The Department further counters that the ALJ did not reject petitioner's pension plan because its employer contributions were not equally distributed, but because its standard of distribution effectively favored a select few employees over all others, a result that cannot be characterized as "just." Finally, the Department rejects petitioner's argument with respect to the ability of private schools for the disabled to attract and retain competent employees, noting that the rule in question is restrictive only in the sense that it limits the amount of money such schools may charge sending public school districts to those costs which are "determined in a reasonable manner." (Department's Reply Exceptions at 1-4, quotation at 4)

Upon careful and independent review, the Commissioner concurs with the analysis and conclusions of the Initial Decision.

Initially, the Commissioner concurs that, regardless of how they may be categorized in other contexts, within the context of State Board of Education rules controlling the operation of private schools for the disabled, *N.J.A.C. 6A:23-4.1 et seq.*, pension plans are

clearly considered fringe benefits, and as such are subject to the requirements of *N.J.A.C.* 6A:23-4.5(a)23. As it existed during the time pertinent to this matter, *N.J.A.C.* 6A:23-4.4(f) expressly required private schools for the disabled to establish and maintain employee handbooks containing “an outline of all employee fringe benefits that shall include\*\*\*: health insurance coverage, life insurance, *type(s) and qualification for pension(s)* and sick day benefits” (emphasis supplied). This list remains the core of the expanded list contained in the rule currently in effect, and the policy underlying *N.J.A.C.* 6A:23-4.4(f) has been additionally emphasized by subsequent amendment to *N.J.A.C.* 6A:23-4.5(a)31 specifically linking pension plans to the requirements of the fringe benefit rule. Furthermore, the Commissioner is not persuaded by petitioner’s argument to the effect that, because pension plans are specifically addressed by *N.J.A.C.* 6A:23-4.5(a)31, the State Board did not intend them to be additionally subject to other applicable provisions of *N.J.A.C.* 6A:23-4.5(a): Then and now, fringe benefits addressed by specific sections of rule in addition to *N.J.A.C.* 6A:23-4.5(a)23 also include life insurance (*N.J.A.C.* 6A:23-4.5(a)22) and retiree health benefits (*N.J.A.C.* 6A:23-4.5(a)56).

The Commissioner further concurs that petitioner’s pension plan fails to meet the “equitable standard of distribution” requirement of *N.J.A.C.* 6A:23-4.5(a)23(i) because of the manner in which employees of different salary levels are treated with respect to employer pension contributions. While petitioner’s plan might well be acceptable in some contexts, within the sole context at issue here—implementation of State Board rules for determining the amount of tuition private schools for the disabled may charge to public school districts—the Commissioner cannot find that the Department’s judgment was unsound as a matter of law or policy. Petitioner’s plan clearly has the effect of favoring a small number of highly paid

employees, so that the Department's determination to disallow the tuition costs resulting from that disparity falls well within both the rule's requirement for equitable distribution and its intent to ensure reasonability of charges to public school districts; moreover, it is entirely consistent with current State Board policy on this issue, as reflected in the amendment to *N.J.A.C. 6A:23-4.5(a)23(i)*, adopted in August 2004, expressly prohibiting distribution of fringe benefits by class of employee.<sup>1</sup>

Accordingly, for the reasons set forth therein and above, the Commissioner adopts the Initial Decision of the OAL, dismissing the Petition of Appeal, as the final decision in this matter.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 18, 2005

Date of Mailing: May 18, 2005

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<sup>1</sup> The Commissioner notes that this policy inherently addressed petitioner's argument on exception with respect to the acceptability of disproportionately rewarding classes of employees based on the nature and extent of their duties.

<sup>2</sup> 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.*