

BERGEN CENTER FOR CHILD :
DEVELOPMENT, INC., :
 :
PETITIONER, :
 :
V. : COMMISSIONER OF EDUCATION
 :
NEW JERSEY DEPARTMENT OF EDUCATION, : DECISION
OFFICE OF COMPLIANCE INVESTIGATION, :
 :
RESPONDENT. :
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_____ :

SYNOPSIS

Petitioner, an approved private school for the disabled, appealed the determination by the respondent Department disallowing certain costs in its final approved tuition rate for the 2002-03 fiscal year; specifically, an expenditure of \$1,739 for an event that the petitioner describes as a “field trip” or “group activity” designed to promote social skills and as a reward for successful students under the school’s behavior modification program. Petitioner claimed that the activity advances legitimate instructional goals and objectives consistent with each student’s Individualized Education Program (IEP), and that the respondent acted arbitrarily, capriciously and unreasonably by failing to include the cost in the approved tuition rate. The parties filed cross-motions for summary decision.

The ALJ found, *inter alia*, that: petitioner promoted the field trip in question as an opportunity for students to practice social skills, improve their ability to communicate and learn proper behavior outside the school setting; participation in the event was integral to the token economy plan of behavior modification used by the petitioning school; respondent Department failed to introduce any countervailing evidence to rebut petitioner’s showing that the activity is fully consistent with the contents of the students’ IEPs. The ALJ concluded that respondent Department misapplied the controlling regulations in disallowing the cost in question, and ordered that the sum of \$1,739 be included in setting the tuition rate that petitioner charges to sending public school districts.

The Commissioner concurs with the ALJ’s determination that the respondent Department erred in disallowing the cost at issue in this matter, adopts the recommended decision of the OAL, and directs that the sum of \$1,739 is appropriately included in setting the tuition rate that the petitioner charges to its sending public school districts.

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 1807-05
AGENCY DKT. NO. 358-10/04

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Respondent sought and was granted an extension of time within which to file exceptions to the Initial Decision. Petitioner, similarly upon request, was granted an extension to file reply exceptions. These submissions were filed in accordance with the modified timelines, and were fully considered by the Commissioner in reaching her determination herein.

Respondent's exceptions present suggested interpretative analysis of *N.J.S.A.* 18A:36-21 to 23, *N.J.A.C.* 6A:23-4.5(a)(30), *N.J.A.C.* 6A:23-4.2(a)(1), *N.J.A.C.* 6A:23-4.2(a)(1)(ii) and *N.J.A.C.* 6A:23-4.2(a)(1)(iv), which it avers leads to the conclusion that the Administrative Law Judge (ALJ) erred in his determination that the Department misapplied these provisions in excluding the \$1,739 field trip cost from the tuition rate charged to sending public school districts. It urges that the Commissioner subscribe to this interpretation in order "to avoid any implication arising from the decision in this matter that private schools for the disabled may simply incur a charge for any type of student activity – whether a field trip, social activity, or other event deviating from regular day-to-day

instruction – and then pass this cost along to its sending districts by justifying the activity as ‘educational’ in retrospect.” (Respondent’s Exceptions at 15)

Upon careful and independent review of the record, the Commissioner, finding respondent’s exceptions unpersuasive under the particular circumstances existing in this case, concurs with the Administrative Law Judge’s (ALJ) determination, for the reasons clearly presented in his Initial Decision, that the Department erred in disallowing the cost at issue in this matter. The certification offered by petitioner establishes that the field trip advanced the goal of implementing petitioner’s behavior modification program and afforded a learning experience for the students. As noted by the ALJ, respondent offered no countervailing affidavit or certification.

Accordingly, the recommended decision of the OAL is adopted. It is hereby directed that the sum of \$1,739 is appropriately included in setting the tuition rate that the Bergen Center for Child Development, Inc. charges to its sending public school districts.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 14, 2005

Date of Mailing: October 17, 2005

* 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.*