

THE DERON SCHOOL OF NEW JERSEY, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 NEW JERSEY STATE DEPARTMENT OF : DECISION  
 EDUCATION, OFFICE OF COMPLIANCE, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioning private school for the disabled appealed the Department’s determination to disallow the cost of increased pension benefits – paid under the school’s Social Security Integration Pension Benefit plan – from its final approved tuition rate for the 2002-2003 fiscal year. The Department acted on audit findings showing that benefits paid to four of petitioner’s employees – totaling \$8,778 – did not meet the equitable standard of distribution required by *N.J.A.C.* 6A:23-4.5(a)23. Petitioner argued that these benefits had been fully disclosed in previous audit reports over many years, and the Department’s failure to disallow them previously was relied upon as tacit approval that the integrated pension plan conformed to the regulations.

The ALJ concluded, *inter alia*, that: the Social Security Integration Pension Benefit is a non-allowable expense because it is not equitably distributed; the Department did not use its power to interpret its own regulations as a means for amending the regulations; laxity in enforcement of a regulation does not prevent subsequent enforcement; and equitable estoppel can only be invoked against a public entity to prevent manifest injustice. Accordingly, the ALJ affirmed the Department’s disallowance of \$8,778 from petitioner’s final approved tuition rate for 2002-2003.

The Commissioner concurred with the ALJ’s analysis and conclusions; adopted the Initial Decision of the OAL for the reasons clearly stated therein; and dismissed the instant petition.

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.

March 7, 2007

OAL DKT. NO. EDU 3367-05  
AGENCY DKT. NO. 6-1/05

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Department’s reply thereto – filed in accordance with *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching her determination herein.

Petitioner’s exceptions essentially recast and reiterate arguments advanced below with respect to its contention that the respondent should be equitably estopped from enforcing *N.J.A.C.* 6A:23-4.5(a)23 against it to preclude costs associated with the school’s Social Security Integration Pension Benefit. It is determined that petitioner’s exception submission raises no credible expostulation which could serve to call into question the Administrative Law Judge’s (ALJ) thorough Initial Decision examination and discussion in this regard and, therefore, further presentation of and elaboration on petitioner’s proffered arguments is unnecessary.<sup>1</sup>

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<sup>1</sup> It is noted that petitioner’s exceptions additionally charge that this matter was inappropriately decided on summary decision as there are “disputed issues of material fact that must be resolved prior to the entry of a summary decision.” (Petitioner’s Exceptions at 1) Such a position, at this point in time, is – at the very least – curious, given that this matter was decided on *cross* motions for summary decision. As pointed out by respondent – “instead of opposing the Department’s Motion for Summary Decision altogether by arguing that factual disputes in this matter required disposition via an evidentiary hearing, the School only filed a cross-motion arguing its case as a matter of law.” (Respondent’s Reply Exceptions at 5)

Upon careful and independent review, the Commissioner concurs with the ALJ's Initial Decision analysis and conclusions. She, therefore, finds that the \$8,778 in Social Security Integration Pension Benefits paid by petitioner to its employees during the 2002-03 school year is a non-allowable fringe benefit pursuant to *N.J.A.C.* 6A:23-4.5(a)23 which must be excluded from the calculation of the school's certified actual cost per pupil for that period.

Accordingly, the Initial Decision of the OAL is adopted for the reasons clearly stated therein and the instant Petition of Appeal is hereby dismissed.

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

COMMISSIONER OF EDUCATION

Date of Decision: March 7, 2007

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<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.*