

#303-11 (OAL Decision: Not yet available online)

BROOKFIELD SCHOOLS, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 NEW JERSEY DEPARTMENT OF : DECISION  
 EDUCATION, DIVISION OF FINANCE, :  
 :  
 RESPONDENT. :  
 \_\_\_\_\_ :

SYNOPSIS

The petitioner, Brookfield Schools (Brookfield), is a private school for the handicapped (PSH) which has been approved by the New Jersey Department of Education (Department) to receive public school special education students on a tuition basis. Brookfield challenged the Department's determination to restrict its 2008-2009 tuition rate to a 10% increase over its tentative per diem rate. Brookfield had certified a tuition rate that represented a 17.39% increase, based on the escalation of its costs per pupil resulting from an unexpected drop in enrollment of 25 percent in the fall of 2008. The Department contended that its action was warranted by Brookfield's failure to comply with *N.J.A.C. 6A:23A-18.2(a)(2)*, which requires PSHs to timely notify sending districts when proposed tuition increases will exceed 10%. Brookfield asserted that it complied with the letter and spirit of the regulation. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the case is ripe for summary decision; the clear intent of *N.J.S.A. 18A:46-21* is that the tuition charged by PSHs be fair and related to the educational services actually provided by the PSH, and regulations were promulgated by the Department to implement this statutory intent; the intent of *N.J.A.C. 6A:23A-18.2(a)(2)* is to ensure that sending districts are promptly advised about proposed tuition adjustments, that such adjustments be linked to properly developed financial data, that these financial reports be approved by the PSHs' governing body, and that such approval is a prerequisite to Department approval of the final tuition rate; and Brookfield acted in concert with these regulatory requirements when it notified sending districts in November 2008 of the proposed tuition adjustments. The ALJ determined that *N.J.A.C. 6A:23A-18.2(a)(2)* does not expressly require formal approval of a PSHs' financial report prior to proposing a rate increase, and concluded that Brookfield substantially complied with the regulatory requirements. Accordingly, the ALJ ordered summary decision in favor of petitioner.

Upon full consideration, the Commissioner concurred with the ALJ that summary decision is appropriately granted to the petitioner. The Initial Decision was adopted as the final decision in this matter, and Brookfield's request for a tuition increase of 17.39% for 2008-2009 was granted.

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.

July 28, 2011

OAL DKT. NO. EDU 11447-10  
AGENCY DKT. NO. 569-9/10

BROOKFIELD SCHOOLS, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 NEW JERSEY DEPARTMENT OF : DECISION  
 EDUCATION, DIVISION OF FINANCE, :  
 :  
 RESPONDENT. :  
 \_\_\_\_\_ :

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

Respondent’s exceptions essentially recast and reiterate its arguments advanced before the Administrative Law Judge (ALJ) below. In that the Commissioner finds that such arguments were fully considered and addressed in the Initial Decision, they will not be revisited here.

Upon full consideration, the Commissioner concurs with the ALJ – for the reasons comprehensively presented in her decision – that summary decision is appropriately granted to petitioner.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. Respondent’s determination limiting the tuition increase allowably charged by Brookfield Schools for the 2008-09 school year to 10 percent is reversed.

Brookfield Schools' request for a tuition increase of 17.39 percent for the 2008-09 school year is hereby granted.

IT IS SO ORDERED.\*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 28, 2011

Date of Mailing: July 29, 2011

---

\* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).