

**New Jersey Commissioner of Education
Final Decision**

Board of Education of the City of Vineland
Cumberland County,

Petitioner,

v.

Cumberland County Board of Vocational Education,
Cumberland County,

Respondent.

Synopsis

The petitioner, Board of Education of the City of Vineland (Vineland), sought reimbursement from the respondent, Cumberland County Board of Vocational Education (CCTEC), for alleged overpayment of tuition for the 2020-2021 school year. Vineland contends that CCTEC's proposed 50% adjustment to the overpayment amount of \$1,185,655.00 would result in Vineland being charged more than the school district's actual cost per pupil, in violation of *N.J.S.A. 18A:54-20.1(c)*. Vineland filed a motion for summary decision, which was opposed by CCTEC.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; the issue for determination in this case was whether the respondent can charge the petitioner more than the certified tuition rate for the 2020-2021 school year; Vineland filed a motion based on there being no factual dispute that, pursuant to *N.J.S.A. 18A:54-20.1(c)*, CCTEC cannot charge petitioner more than the State certified tuition rate for the education of Vineland students at CCTEC; respondent's opposition to the petitioner's motion for summary decision on the grounds that the parties had a ten-year history of abiding by a 50% reciprocal provision which allowed CCTEC to pay or give a credit of half the total amount owed to Vineland is without merit, as this 50% provision contravenes *N.J.S.A. 18A:54-20.1(c)* and is unenforceable as it has resulted in Vineland being forced to pay CCTEC more than the actual cost per pupil cost. The ALJ concluded that the 50% adjustment applied to the 2020-2021 tuition agreement is unenforceable as a matter of law and because no agreement existed between the parties. Accordingly, the ALJ granted Vineland's motion for summary decision.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion, and adopted the Initial Decision of the OAL as the final decision in this matter. Accordingly, the Commissioner granted petitioner's motion for summary decision. Petitioner is entitled to reimbursement or a credit from respondent in the amount of the full tuition overpayment of \$1,185,665.00 for the 2020-2021 school year.

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.

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Board of Education of the City of Vineland,
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Petitioner,

v.

Cumberland County Board of Vocational
Education, Cumberland County,

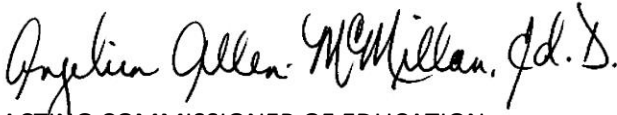
Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge that *N.J.S.A. 18A:54-20.1(c)* precludes a county vocational school from charging a sending district more than the actual State certified per pupil rate. Petitioner is therefore entitled to reimbursement or a credit from respondent in the amount of the full tuition overpayment of \$1,185,665.00 for the 2020-2021 school year.

Accordingly, petitioner's motion for summary decision is granted.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 21, 2023
Date of Mailing: August 23, 2023

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

GRANTING SUMMARY

DECISION

OAL DKT. NO. EDU 02861-22

AGENCY DKT. NO. 56-3/22

**CITY OF VINELAND BOARD OF
EDUCATION, CUMBERLAND
COUNTY,**

Petitioner,

v.

**CUMBERLAND COUNTY VOCATIONAL
BOARD OF EDUCATION,
CUMBERLAND COUNTY,**

Respondent.

Robert A. De Santo, Esq., for petitioner (Gruccio, Pepper, De Santo & Ruth, P.A.,
attorneys)

Kerri A. Wright, Esq., for respondent (Porzio, Bromberg & Newman, P.C.,
attorneys)

Record Closed: April 11, 2023

Decided: July 10, 2023¹

¹ Due to a voluminous caseload, the Initial Decision was delayed.

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

The Board of Education of the City of Vineland School District, Cumberland County (Petitioner/VBE) seeks reimbursement from Cumberland County Board of Vocational Education (Respondent/CCTEC) for alleged overpayment of tuition for the 2020-21 school year.

PROCEDURAL HISTORY

Petitioner filed a petition, dated March 21, 2022, seeking reimbursement of alleged tuition overcharges paid to the respondent for the 2020 through 2021 school year.² The respondent filed its answer, dated April 11, 2022. The matter was transmitted as a contested case to the Office of Administrative Law (OAL) where it was filed on April 12, 2022. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

Petitioner filed a motion for summary decision, dated January 9, 2023. On January 19, 2023, the respondent requested a two-week extension which was granted. However, instead of filing a response to the petitioner's motion for summary decision, the respondent submitted a motion to consolidate dated February 13, 2023. This motion was denied by the undersigned on April 10, 2023. On March 29, 2023, the respondent was directed to clarify whether it intended to respond to the petitioner's motion for summary decision by April 10, 2023. On April 10, 2023, the respondent filed its opposition to the petitioner's motion for summary decision. Petitioner filed its reply on April 11, 2023. The record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

The following **FACTS** are undisputed and I, therefore **FIND**:

² Petitioner filed two other petitions seeking tuition reimbursement of tuition overcharges for school years 2012 through 2019. These petitions were consolidated on December 10, 2021 and are pending adjudication.

1. Petitioner oversees the operation of the City of Vineland School District Type II School District. (Petitioner's Br. in Supp. of Motion for Summary Decision (MSD) at 3.)
2. Respondent oversees the operation of the Cumberland County Vocational School District and its vocational school known as CCTEC. (Ibid.)
3. Petitioner pays tuition for student residents of the City of Vineland who attend CCTEC. (Ibid.)
4. From 2011 through 2020, petitioner and CCTEC entered into successive one-year contracts using a template and pre-printed text promulgated by the New Jersey Department of Education providing for tuition rates and adjustments. (Exhibit A, Respondent's Opposition to Petitioner's MSD, CCTEC00010 through CCTEC00020.)
5. The tuition contract for the 2020-21 school year is only signed by the respondent's representatives. (Exhibit 1, Petitioner's Certification of Counsel.)
6. In a letter dated February 7, 2022, the respondent's business administrator notified the petitioner's business administrator of a tuition adjustment for the 2020-2021 school year. Specifically, the letter stated that a tuition overpayment of \$1,185,665.00 would be reduced by 50% on the petitioner's September 2022 tuition invoice. (Exhibit A, Petitioner's Br. In Supp. of MSD.)
7. In an email dated November 9, 2020, petitioner's counsel notified respondent's counsel questioning the adjustment and requesting revisions to the contract language. (Exhibit 2, Petitioner's Certification of Counsel.)

8. Counsel for petitioner and respondent exchanged emails from November 9, 2020 through November 23, 2020, discussing revising the 2020-21 contracts. (Exhibit 3, Petitioner's Certification of Counsel.)
9. In emails dated January 11, 2021 and January 20, 2021, petitioner's counsel requested revisions to four tuition contracts but at a minimum three contracts, which included a regular education contract, Strive and Strive ESY contracts for the 2020-21 school year. (Ibid.)
10. On January 26, 2021, petitioner's counsel emailed respondent's counsel seeking a response. Respondent's counsel promised to follow up with his client. (Ibid.)
11. In emails dated February 8, 2021 and February 23, 2021, petitioner's counsel sought a response from the respondent. (Ibid.)
12. On June 7, 2021, petitioner's counsel proposed that the tuition contracts be revised to change the reimbursement to 100% instead of 50% for any overpayment or underpayment. Respondent's counsel stated that he would check with his client on the same date, however, as of June 24, 2021, there was no answer to the proposal. (Ibid.)

LEGAL ANALYSIS AND CONCLUSIONS

A motion for summary decision (Motion) may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material facts, and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, to prevail in such an application. (Ibid.) These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “consider whether competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Insurance Company of American, 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536.

The issue presented is whether the respondent can charge more than the certified tuition rate to the petitioner for the 2020-21 school year. Based upon the evidence presented, this case is ripe for summary decision.

The petitioner herein filed a Motion on the basis that there is no factual dispute that the respondent cannot charge more than the State certified tuition rate. Petitioner relies upon N.J.S.A. 18A:54-20.1(c) which provides in relevant part:

The board of education of a county vocational school district shall receive such funds as may be appropriated by the county pursuant to N.J.S.A. 18A:54-29.2 and shall be entitled to collect and receive from the sending districts in which each pupil attending the vocational school resides, for the tuition of that pupil, . . . a sum not to exceed the actual cost per pupil as determined for each vocational program classification, according to rules prescribed by the commissioner and approved by the State board.
(Emphasis added.)

The “actual cost per student” is defined at N.J.A.C. 6A:23A-17.1(b) as “the local cost per student in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with the grade/program categories in N.J.S.A. 18A:7F-50 and 18A:7F-55 . . .” This cost is determined by the Commissioner of Education (Commissioner) and is based upon the:

- a. Revenues, expenditures, and fund balances reflected in the [county vocational school district] CVSD’s annual independent audit; and

- b. Average daily enrollment data by category submitted by the CVSD on a form prescribed by the Commissioner.

[N.J.A.C. 6A:23A-17.4(b).]

Once the Department of Education determines the actual cost per student, the receiving district is **required** to return the excess to the sending district or at the option of the sending district to credit the sending district the excess amount in accordance with N.J.A.C. 6A:23-17.1(f)(6) which provides:

If the Commissioner later determines that the tentative tuition charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was greater than the actual cost per student during the school year multiplied by the actual ADE [average daily enrollment] received, the receiving district board of education shall return to the sending district board of education in the second school year following the contract year the amount by which the tentative charge exceeded the actual charge as determined above, or, at the option of the receiving district board of education, shall credit the sending district board of education with the excess amount. The receiving district board of education shall make such adjustment for a contractual agreement for a student enrolled in a special education class no later than the end of the second school year following the contract year.

The receiving district **may** charge for a shortfall after the tuition calculation has been made pursuant to N.J.A.C. 6A:23-17.1(f)(7) which provides:

If the Commissioner later determines that the tentative charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was less than the actual cost per student during the school year multiplied by the actual average daily enrollment received, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the second school year following the school year for which the tentative charge was paid. Such adjustment for a contractual agreement for a student enrolled in a special education class shall be made no later than the end of the second school year following the contract year.

(Emphasis added.)

The tuition contract between the parties for the 2020–2021 school year is a pre-printed template agreement provided by the New Jersey Department of Education. Paragraph 4a of regular education tuition agreement provided that if the VBE overpaid tuition, the CCTEC had the option of paying the excess or providing a credit to the VBE in accordance with a schedule to which the parties agreed. The parties set the reconciliation date as June 30 of the third year following the base year and added “50%.” It is uncontested that this means CCTEC would only reimburse or give a credit of half of the total amount owed by or to the VBE.

Petitioner contends that this 50% adjustment results in the VBE being charged more than the actual cost per pupil in violation of the law. Moreover, petitioner asserts that the parties never finalized the tuition agreement for the 2020-21 school year and thus, the respondent’s action in reducing the amount owed to the petitioner is unenforceable.

The respondent opposes the petitioner’s MSD on grounds that the parties had a ten-year history of abiding by the 50% reciprocal provision which allowed CCTEC to pay or give a credit of half of total amount owed to the VBE. Moreover, the CCTEC contends that the parties’ failure to fully execute the 2020-21 agreement was irrelevant and did not negate the ten-year precedent. I am not so persuaded.

If the VBE is owed a reimbursement because it paid more than the actual per pupil cost, then receiving only half of that reimbursement results in the VBE paying more than the actual per pupil cost and that contravenes N.J.S.A. 18A:54-20.1(c). In an Order dated January 5, 2023, involving the same parties, the undersigned determined that the 50% reciprocal provision was unenforceable in fully executed contracts dating from 2012 through 2020 because the 50% reciprocal provision resulted in forcing the VBE to pay more than the actual per pupil cost which contravened N.J.S.A. 18A:54-20.1(c).

“The most important aspect of a contract is the intent of the parties.” Bd. of Ed. of Twp. of Waterford v. Bd. of Ed. of Twp. of Hammonton, 2008 N.J. AGEN LEXIS 69. Here,

the partially signed agreement as well as the numerous emails spanning from November 2020 to June 2021, evinces that there was no agreement between the parties for the 2020-21 school year. Petitioner's counsel expressly opposed the 50% provision and attempted to revise the contract language and respondent's counsel never received approval from his client. Thus, there was no agreement for the CCTEC to adjust the amount owed to the VBE and the VBE was entitled to the full reimbursement in accordance with the statute and regulations cited herein. Accordingly, I **CONCLUDE** that the 50% adjustment as applied to the 2020-21 tuition agreement is unenforceable as a matter of law and because there was no agreement between the parties.

Having carefully reviewed the record, I **FIND** there are no material facts in dispute and the petitioner is entitled to prevail as a matter of law. The record reflects that N.J.S.A. 18A:54-20.1(c) precludes a county vocational school from charging more than the actual State certified per pupil rate. For the 2020-21 school year there was a tuition overpayment of \$1,185,655 owed to the VBE. The CCTEC did not reimburse the full amount but chose to provide a 50% credit to the VBE despite the lack of a fully executed agreement. This resulted in the VBE paying more than the State certified actual cost per student which violates N.J.A.C. 18A:54-20.1(c). Viewing these facts as I must, in the light most favorable to the non-moving party, I **CONCLUDE** there is no factual dispute sufficient to justify an evidentiary hearing and summary decision in favor of the petitioner is appropriate.

ORDER

Based upon the reasons stated above, petitioner's Motion for Summary Decision is hereby **GRANTED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

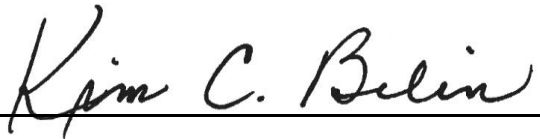
This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of

Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 10, 2023 _____

DATE

 _____

KIM C. BELIN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KCB/am/lam

APPENDIX

EXHIBITS

For petitioner

- Motion for Summary Decision with certification and exhibits, dated January 9, 2023
- Petitioner's Reply Letter to Respondent's Opposition, dated April 11, 2023

For respondent

- Letter Brief in Opposition to Petitioner's Motion for Summary Decision, dated April 12, 2023