

EDU # 508-00
C # 116-01
SB # 16-01

CARRIER FOUNDATION – EAST MOUNTAIN :
SCHOOL, SOMERSET COUNTY, :
PETITIONER- APPELLANT, : STATE BOARD OF EDUCATION
V. : DECISION
STATE DEPARTMENT OF EDUCATION, :
OFFICE OF COMPLIANCE, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, April 12, 2001

For the Petitioner-Appellant, Riker, Danzig, Scherer, Hyland & Perretti,
LLP (James S. Rothschild, Jr., Esq., of Counsel)

For the Respondent-Respondent, Allison Colsey Eck, Deputy Attorney
General (John J. Farmer, Jr., Attorney General of New Jersey)

After careful review of the record in this matter, we reject appellant’s argument that N.J.A.C. 6:20-4.1(d) should control the allocation of the general and administrative costs (hereinafter “indirect costs”) at issue in this appeal. The existence of the Foundation does not in and of itself constitute use of the facility used by the East Mountain School for unrelated activities or enterprises within the meaning of N.J.A.C. 6:20-4.1(d). Rather, as the Commissioner held, the question of whether to include these costs in the “actual cost per pupil” for tuition purposes is controlled by N.J.A.C. 6:20-4.1(c).

However, in reviewing this matter, we find that the record does not clearly indicate the rationale relied upon by the Office of Compliance in disallowing \$72,132 in expenses not previously included as direct costs to the School and which the School had allocated as indirect costs. Without such rationale, we are unable to review the merits of the School's appeal of the disallowance of this amount. However, on the basis of our review of the record, we reject the contention of the Deputy Attorney General representing the Office of Compliance that by allocating the same expenses as indirect costs for purposes of establishing the actual cost per pupil pursuant to the State Board's regulations as the Foundation had included as direct costs for purposes of Medicare reimbursement, the School had double-charged for these expenses. Quite simply, the record does not support such a conclusion.

Therefore, we remand this matter to the Commissioner for the limited purpose of establishing the basis upon which the Office of Compliance made its determination that \$72,132 allocated by the School as indirect General and Administrative costs was non-allowable. In all other respects, we affirm the decision of the Commissioner.

We retain jurisdiction.

October 3, 2001

Date of mailing _____