

SB #44-01 and #4-02 (consolidated) and #14-02 (consolidated)

IN THE MATTER OF THE APPROVAL OF THE :
LEASE SUBMITTED PURSUANT TO :
N.J.S.A. 18A:20-4.2 BY THE STATE-OPERATED :
SCHOOL DISTRICT OF THE CITY OF NEWARK, :
ESSEX COUNTY, : STATE BOARD OF EDUCATION

and : DECISION ON MOTIONS

IN THE MATTER OF THE APPROVAL OF :
AMENDMENTS TO THE LEASE SUBMITTED :
PURSUANT TO N.J.S.A. 18A:20-4.2 BY THE :
STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF NEWARK. :

Decided by the Commissioner of Education, October 16, 2001

Decision on motion by the Commissioner of Education,
December 26, 2001

Decision on motions by the State Board of Education, February 6, 2002

For the Appellant, Horowitz, Rubino & Patton (Curtis L. Michael, Esq., of
Counsel)

For the Respondent State-Operated School District of the City of Newark,
Essex County, McManimon & Scotland, L.L.C. (Leslie G. London,
Esq., of Counsel)

For the Respondent 570 Escuela Partners, L.L.C., Drinker Biddle &
Shanley (Kenneth J. Wilbur, Esq., of Counsel)

This matter involves an appeal from a determination by former Commissioner of Education Vito A. Gagliardi, Sr. on October 16, 2001 to approve a lease agreement with an option to purchase between 570 Escuela Partners and the State-operated School District of the City of Newark, which Commissioner Gagliardi had granted pursuant to

N.J.S.A. 18A:20-4.2(e). The appellant is Hartz Mountain Industries, Inc. and its affiliate Hartz 707 Broad Limited Partnership (hereinafter “Hartz”), from whom the State-operated District currently leases the premises in which its central administrative offices are housed.

On February 6, 2002, the State Board of Education denied the respondents’ motions to dismiss the appeal in this matter, finding that Hartz’s appeal had been filed in a timely manner and that it had the requisite standing to pursue the appeal. In the Matter of the Approval of the Lease Submitted Pursuant to N.J.S.A. 18A:20-4.2 by the State-Operated School District of the City of Newark, decision on motions by the State Board of Education, February 6, 2002.

On March 12, 2002, Hartz filed an appeal from Commissioner of Education William L. Librera’s approval on February 11, 2002 of amendments to the lease approved by former Commissioner Gagliardi. On April 19, 2002, Hartz moved to consolidate its appeal from Commissioner Librera’s approval of the amendments with its appeal from former Commissioner Gagliardi’s approval of the original lease. Hartz also moved to supplement the record on appeal.

On April 26, 2002, the counsel for the State-operated School District filed a motion with the State Board seeking reconsideration of our February 6 determination that Hartz had the requisite standing to pursue its appeal and asking that the State Board request an opinion on the issue from the Attorney General’s Office.

Before considering the State-operated District’s motion for reconsideration, we grant Hartz’s motion to consolidate its challenge to the recent approval of the

amendments to the lease with its appeal from former Commissioner Gagliardi's approval of the lease. Hence, our determination today will apply to both challenges.

While the motions now before us were pending, the matter came to the attention of the Director of the Division of Law, and, on May 10, 2002, a memorandum providing formal agency advice by the Attorney General's Office on the issue of standing was transmitted to the President of the State Board and the Chairperson of the Legal Committee. By this memorandum, the Attorney General's Office has advised us that Hartz does not have the requisite standing to challenge the Commissioner's determination to approve the lease in question and that its appeal to the State Board should therefore be dismissed.

As the head of an administrative agency, we are required to follow legal advice provided to us by the Attorney General's Office. Given this fact and because the issue of standing implicates our jurisdiction to decide the merits of Hartz's appeal, we are compelled, on the basis of the legal advice we have received, to reconsider our decision of February 6, 2002 and to reverse that decision. Accordingly, we dismiss the consolidated appeal in this matter.¹

June 5, 2002

Date of mailing _____

¹ In light of our determination, it is not necessary to consider the State-operated District's application for leave to file a "reply brief" in response to the brief filed in opposition to its motion for reconsideration, see N.J.A.C. 6A:4-1.18, and we have not considered that brief in reviewing this matter. Nor is it necessary to consider Hartz's motion to supplement the record.