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IN THE COURT OF COMMON PLEAS OF
NORTHUMBERLAND COUNTY, PENNSYLVANIA
CIVIL DIVISION

NHS YOUTH SERVICES, INC.,

PLAINTIFF

VS.

NO. CV-07-1435

SHAMOKIN AREA SCHOOL DISTRICT
AND THE BOARD OF DIRECTORS
OF THE SHAMOKIN AREA SCHOOL DISTRICT,

DEFENDANTS

ORDER

AND NOW, this 14th day of March, 2008, upon consideration of the briefs and arguments of counsel, this Court finds as follows with respect to the Plaintiff's Motion for Peremptory Judgment:

1. The uncontroverted facts are that:

- (a) Plaintiff (NHS) and the Defendant (SASD) entered into a contractual relationship in 2003 for NHS to provide for the education of juvenile offenders committed to NHS.
- (b) Section 1306 of the Public School Code of 1949 (Code), 24 P.S. § 13-1306 (as amended) places initial responsibility for meeting the educational needs of the residents of the juvenile treatment facility upon the school district in which the said facility is located; therefore, SASD was to meet the educational needs of those juveniles placed at NHS.
- (c) By virtue of the aforesaid contractual relationship, NHS fulfills SASD's statutory obligation as to the educational needs of these juveniles.

- (d) Under Section 1308 of the Code, 24 P.S. § 13-1308, the tuition of the juvenile offenders is the ultimate responsibility of the school district where the juvenile resided prior to commitment to the facility, payable to the host district (i.e. SASD here).
- (e) Thus, SASD is the conduit between NHS and the other school districts throughout this Commonwealth as to the tuition expense for the education of the juvenile offenders committed to NHS.
- (f) The contract between NHS and SASD provides for the exchange of necessary information for the assessment of the reimbursement from the school district, and the arrangement for SASD to obtain the same with allowance for an administrative fee in connection therewith of seven percent.
- (g) The said contract provided that NHS would be seeking reimbursement for tuition¹ and also "lease rental payments to be included in the inter-district tuition payments as permitted by section 1309(a)(1) of the Public School Code ..." (Paragraph 11 of the Contract).
- (h) SASD has not disputed the calculation and amount of the tuition and rental charges owed to NHS under the said contract.
- (i) SASD has obtained from the other school districts funds in fulfillment of their obligations under the Code under the circumstances, as to which SASD has placed the same in escrow with interest pending a judicial determination as to the propriety of NHS charging a rental payment with the tuition.

¹ See 24 P.S. § 25-2561.

2. The propriety of the lease rental charge was raised in opinion letters by assistant counsel with the Pennsylvania Department of Education, dated April 30, 2003 and July 28, 2004, on the stated basis that SASD did not incur any capital expenditures to erect school buildings or creating a separate school for these students at NHS, and "Section 1309(a)(1) does not allow host school districts to require resident districts . . . to fund the erection of school buildings belonging to the private corporations to whose care the students are adjudicated for detention and rehabilitation purposes."
3. The Department of Education's interpretation of the Code is normally entitled to some deference; however, this is not appropriate where the statute itself is otherwise clear. *Seeton v. Pennsylvania Game Commission*, 937 A.2d 1028, 1037 (Pa. 2007).
4. The applicable standard was recently summarized by our Supreme Court in *Ephrata School District v. County of Lancaster*, 938 A.2d 264, 270-71 (Pa. 2007):

In all matters involving statutory interpretation, we apply the Statutory Construction Act, 1 Pa. C.S. § 1501 et seq., which provides that the object of interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. 1 Pa. C.S. § 1921(a). A statute's plain language generally provides the best indication of legislative intent. See e.g., *McGrory*, 915 A.2d at 1158; *Commonwealth v. Gilmour Mfg. Co.*, 573 Pa. 143, 822 A.2d 676, 679 (2003); *Pa. Fin. Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 664 A.2d 84, 87 (1995) ("Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words.") Only where the words of a statute are not explicit will we resort to other considerations to discern legislative intent. 1 Pa. C.S. § 1921(c); see also *In re: Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 577 Pa. 231, 843 A.2d 1223, 1230 (2004) (citing *O'Rourke v. Commonwealth, Dep't of Corr.*, 566 Pa. 161, 778 A.2d 1194, 1201 (2001)); *Ramich v. Workers' Comp. Appeal Bd., (Schatz Elec., Inc.)*, 564 Pa. 656, 770 A.2d 318, 322 (2001).

5. The language of Section 1309(a)(1) is clear – there is an express allowance for a rental charge (in addition to the cost of tuition) where it is necessary to provide a separate school for the accommodations of these juvenile offenders:

§ 13-1309. Cost of tuition; how fixed

- (a) The cost of tuition in such cases shall be fixed as is now provided by law for tuition costs in other cases, except in the following circumstances:

- (1) Where, for the accommodation of such children, it shall be necessary to provide a separate school or to erect additional school buildings, the charge for tuition for such children may include a proportionate cost of the operating expenses, rental, and interest on any investment required to be made in erecting such new school buildings.

6. This sub-section clearly permits the host district "to provide a separate school or to erect additional school buildings". (Emphasis added) SASD had a statutory choice, and rather than erect new buildings, it contracted with NHS to provide the school. The statute then provides for "rental" as to a proper reimbursement item.

7. While the Department's interpretation may be justified on a policy basis as the buildings are owned by a private corporation, as opposed to the host school district, the legislature has not made any such distinction in the wording of the statute at issue.

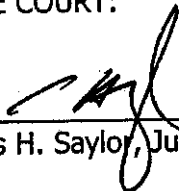
8. NHS and SASD are entitled to the benefits, and also subject to the responsibilities, of their contractual undertaking that was presumably entered into with the best interests of the host district in meeting its educational responsibilities to these students, and no known challenges have been made to the arrangement by the other school districts.

9. NHS is entitled to relief in mandamus so that the escrow account funds can

be released to it, and for future reimbursement under the terms of the contract, as the proper remedy under the circumstances. See *Community Service Foundation, Inc. v. Bethlehem Area School District*, 706 A.2d 882 (Pa. Cmlth. 1998).

Accordingly, in view of the foregoing, Plaintiff's motion is GRANTED, and judgment is entered in its favor. Defendants are hereby ORDERED to dissolve the escrow, to pay the funds held in escrow, with interest accrued thereon to Plaintiff, after deduction of the administrative fee and interest thereon.²

BY THE COURT:



Charles H. Saylor, Judge

pc: Edward Murphy, Esquire, 240 N. 3rd Street, 8th Floor, Harrisburg, PA 17101
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Court

² As noted at the time of argument, Defendants' preliminary objections were to be withdrawn by stipulation of counsel. In any event, the objections raised were without merit. Finally, the Pennsylvania School Board Association's general counsel was invited by letter of February 7, 2008 to file an amicus brief but no response was received.