IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Summit School, Inc., t/d/b/a Summit Academy, Petitioner	:	
v.	:	No. 20 M.D. 2011
Commonwealth of Pennsylvania, Department of Education, Respondent	:	Submitted: July 22, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER[1] **FILED: December 1, 2011**

Before this Court are the preliminary objections filed by the Commonwealth of Pennsylvania, Department of Education (Department) to the Amended Complaint for Declaratory Judgment (Complaint) filed by The Summit School, Inc., t/d/b/a Summit Academy (Academy). For the following reasons, we overrule the Department's preliminary objections.

On January 14, 2011, the Academy filed the Complaint in this Court's original jurisdiction seeking a declaratory judgment under, *inter alia*, the

[1] This opinion was reassigned to the author on October 18, 2011.

Declaratory Judgments Act, 42 Pa. C.S. §§ 7531-7541, requiring the Department to reimburse Butler Area School District (District), with which the Academy has a contract, the 150% tuition rate set forth in Section 2561(6) of the Public School Code of 1949 (School Code),[2] 24 P.S. § 25-2561(6). The Complaint makes the following averments. The Academy is a residential facility for adjudicated delinquents that is licensed by both the Department of Public Welfare, to provide care for up to 353 students, and the Department, as a private academic secondary school. (Compl. ¶¶ 5-7.) Beginning in 1997, the District contracted with the Academy to fulfill the District's "obligation to administer and deliver educational services to students at the Academy." (Compl. ¶ 8.) The contract between the District and the Academy (Agreement) "requires that[,] in the event there is any dispute or delay in payment by the [home] school districts, [the District] has no duty to recover the monies due and owing; rather, the duty to litigate over tuition issues lies solely with the [Academy]."[3] (Compl. ¶ 30 (citing Agreement ¶ 15).) "All educational services have been provided at the [Academy] facility[,] and all students at the [Academy] have been adjudicated delinquent." (Compl. ¶ 9.) Pursuant to Section 1306(a) of the School Code, 24 P.S. § 13-1306(a) (requiring that a school district (host school district) in which an "institution for the care or training of orphans or other children, [to] permit any children who are inmates of such homes, but not legal residents in such district, to attend the public schools in said district, either with or without charge for tuition"),[4] the District is required to

[2] Act of March 10, 1949, P.L. 30, as amended.

[3] The Agreement is attached to the Complaint as Exhibit A. (Compl. ¶ 8, Ex. A.)

[4] Specifically, Section 1306(a) provides:

> (a) The board of school directors of any school district in which there is located any orphan asylum, home for the friendless, children's home, or other

permit non-resident Academy students to attend the District's schools. (Compl. ¶ 10.) According to a Department Circular, the Department permits a host school district, like the District, to "contract with another educational entity to provide for the education of students at the institution" and allows the host school district to finance that contract by "charging the non-resident school district [(home school district)] the tuition rate as determined by" Section 2561 of the School Code. (Compl. ¶¶ 12, 14-15, Ex. B.) Section 2561 sets forth the method by which tuition charges are calculated. (Compl.¶ 16.) Pursuant to Section 2564 of the School Code, 24 P.S. § 25-2564, the Department "is authorized to deduct any monies due and owing from the student's [home] school district and pay such monies over to the district entitled thereto." (Comp. ¶¶ 18, 29.)

In 2001 and 2002, the District billed the non-resident school districts, i.e., the districts in which the Academy's students would have attended had they not been adjudicated delinquent, the 150% tuition rate. (Compl. ¶ 19.) On behalf of

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> institution for the care or training of orphans or other children, shall permit any children who are inmates of such homes, but not legal residents in such district, to attend the public schools in said district, either with or without charge for tuition, textbooks, or school supplies, as the directors of the district in which such institution is located may determine. When any home or institution having for its purpose the care and training of children and having non-resident children under its care, is located in more than one school district, educational facilities may be provided by either district as though the institution were located wholly in that district. If the district or districts in which the institution is located does not have facilities to accommodate the children in its schools or in a joint school of which it is a member, the board of directors shall so notify the [Secretary of Education (Secretary)] not later than July 1. If the [Secretary], after investigation, finds that neither the school district nor the joint school board, if any, can accommodate the non-resident inmates of the institution during the ensuing school term, he shall direct the district and the joint school board, if any, to enter into an agreement with another school district or joint school board to accept them on a tuition basis.

24 P.S. § 13-1306(a).

the home school districts, the Department paid that rate to the District, which then remitted that money, less an administrative fee, to the Academy. (Compl. ¶ 19.) The actual cost of educating the students at the Academy exceeds the 150% rate. (Compl. ¶ 20.) Beginning in 2003, the Department refused to reimburse the District the 150% rate and, instead, reimbursed the District for 100% of the District's tuition rate. (Compl. ¶ 21.) The District, in contracting with the Academy in accordance with the Department's "regulations, has been and continues to administer and deliver . . . education services at the [Academy], thereby entitling it to bill at the 150% rate." (Compl. ¶¶ 22, 26.) The Department has challenged the 150% rate "and upon information and belief, the [Department] has advised at least one [home] school district that the [home] school district was paying too much for educational services at the [Academy], and should seek a refund." (Compl. ¶ 23.) "Since 2003, the Academy has negotiated with [the Department] in an attempt to obtain the 150% payment pursuant to the School Code." (Compl. ¶ 24.)

The Academy asserts in the Complaint that the Department, in refusing to pay the 150% tuition rate, is violating Section 2561(6), which provides

> (6) **Institution Tuition Charge**. When the public school district administers and delivers the educational services required by this act to a child referred to an institution, pursuant to a proceeding under 42 Pa.C.S. Ch. 63 (relating to Juvenile Matters), at the institution itself, the tuition to be charged to the district of residence of such child shall be one and one-half times the amount determined in accordance with clauses (1) through (5), but not to exceed the actual cost of the educational services provided to such child.

24 P.S. § 25-2561(6). The Academy maintains that "[w]ithout the declaration the Academy seeks, the [Academy] will be unjustly and illegally forced to continue to

bear educational expenses for non[-]resident students that by law are to be paid by the [Department]." (Compl. ¶ 35.)

The Department filed preliminary objections to the Academy's Complaint on the basis that: (1) the Academy lacks standing under Sections 1308 and 1309 of the School Code, 24 P.S. §13-1308 and 13-1309,[5] because those provisions state

[5] Section 1308 provides, in relevant part:

> The tuition of such inmates as are included in the sworn statement to the board of school directors shall be paid by the district of residence of the inmates upon receipt of a bill from the district in which the institution is located setting forth the names, ages and tuition charges of the inmates. The district so charged with tuition may file an appeal with the Secretary . . . in which it shall be the complainant and the district in which the institution is located the respondent. The decision of the Secretary . . . as to which of said parties is responsible for tuition, shall be final.

24 P.S. § 13-1308. Section 1309 states, in pertinent part:

> (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:
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> (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.
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> (2) When a child who is an inmate of an institution is a child with exceptionalities, the district in which the institution is located may charge the district of residence, and the district of residence shall pay a special education charge in addition to the applicable tuition charge. . . .
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> (b) For students who the Secretary . . . has determined are legal residents of Pennsylvania without fixed districts of residence, the tuition herein provided for shall be paid annually by the Secretary . . . . For all other students, the tuition herein provided shall be paid by the district of residence or the institution as the case may be, within thirty (30) days of its receipt of an invoice from the district in which the institution is located.

24 P.S. § 13-1309.

only that reimbursement shall be paid to the District; (2) the Academy has failed to join all of the home school districts as indispensible parties; and (3) the Academy has failed to state a claim upon which relief can be granted. We will address each preliminary objection in turn. However, we emphasize that, "in ruling on preliminary objections, we must accept as true all well-pleaded material allegations in the petition for review, as well as all inferences reasonably deduced therefrom." Envirotest Partners v. Department of Transportation, 664 A.2d 208, 211 (Pa. Cmwlth. 1995). This "court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion." Id. To sustain preliminary objections, it must be "clear from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish a right to relief." Pennsylvania AFL-CIO ex rel. George v. Commonwealth, 563 Pa. 108, 114, 757 A.2d 917, 920 (2000).

First, the Department asserts that the Academy lacks standing under Sections 1308 and 1309 of the School Code (requiring the home school district or the Department to pay the tuition rate to the District for educational services provided to the non-resident adjudicated youth housed at the Academy) because it is the District, not the Academy, that has standing to seek additional reimbursement under the School Code. The Department contends that

> [w]hile [the Academy] may have a contractual right which obligates the . . . District to pay it more than the tuition rate for its services, it lacks standing under the . . . School Code to ask for additional reimbursement from [the Department] or the [home] school districts that have students housed at . . . [the] Academy.

(Preliminary Objections ¶ 12.) In so asserting, the Department relies upon Pennsylvania School Boards Association, Inc. v. Zogby, 802 A.2d 6 (Pa. Cmwlth. 2002). However, Zogby is distinguishable.

This Court considered, in Zogby, whether non-chartering school districts had standing pursuant to Section 1717-A of the Charter School Law[6] to challenge the grant of a charter school application by another school district. Concluding that they did not, we explained that Section 1717-A of the Charter School Law permits only the charter school to appeal the denial of an application to the State Charter School Appeal Board (Board). Zogby, 802 A.2d at 9-10. Moreover, only the charter school and a school district whose decision is reversed by the Board may appeal from a decision of the Board. Id. (citing Section 1717-A(i)(10) of the Charter School Law, 24 P.S. § 17-1717-A(i)(10).) Because the Charter School Law did not allow other entities to participate in the appeal process, this Court concluded that the other school districts lacked standing. Sections 1308 and 1309 of the School Code, unlike the statutory provisions at issue in Zogby, do not establish or involve a statutory appeal process. Rather, those provisions offer an explanation, at least in part, of the reimbursement process for educational services provided to non-resident adjudicated youth by school districts. Accordingly, Sections 1308 and 1309 of the School Code do not preclude a contractor providing educational services to non-resident inmates from challenging the amount reimbursed to a school district.[7] We, therefore, overrule this preliminary objection.

[6] Act of March 10, 1949, P.L. 30, as amended, added by Section 1 of the Act of June 19, 1997, P.L. 225, 24 P.S. § 17-1717-A.

[7] Moreover, the Academy also may have standing based on its Agreement with the District, which specifically provides that, if situations arise where litigation must be commenced over tuition issues, the District has "no duty to file suit or engage in litigation" on that matter, but

Next, the Department argues that the Academy failed to join all of the home school districts as indispensible parties, noting that the home school districts, not the Department, have an obligation to reimburse the District pursuant to Section 1308 of the School Code. We disagree.

Our Supreme Court set forth the following requirements for determining whether a party is indispensible in City of Philadelphia v. Commonwealth, 575 Pa. 542, 838 A.2d 566 (2003), stating:

> [A] party is indispensable "when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights." "The basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of" him or her. In undertaking this inquiry, the nature of the claim *and the relief sought* must be considered. Furthermore, we note the general principle that, in an action for declaratory judgment, all persons having an interest that would be affected by the declaratory relief sought ordinarily must be made parties to the action. Indeed, Section 7540(a) of the Judicial Code, 42 Pa.C.S. §7540(a), which is part of Pennsylvania's Declaratory Judgments Act, states that, "when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding."
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> While this joinder provision is mandatory, it is subject to *limiting principles*. For example, where the interest involved is indirect or incidental, joinder may not be required. Additionally, *where a person's official designee is already a party, the participation of such designee may alone be sufficient, as the interests of the two*

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the District "shall grant the right of subrogation to [the Academy] to litigate or otherwise attempt to collect tuition payments due for students at [the Academy]." (Agreement ¶ 15.) Because the present litigation involves tuition issues, it is not clear and free from doubt that the Agreement would not afford the Academy with the requisite level of interest to provide it with standing, i.e., an interest that is substantial, direct, immediate, and not remote, Pittsburgh Palisades Park, LLC v. Commonwealth, 585 Pa. 196, 203-04, 888 A.2d 655, 659-60 (2005).

> *are identical, and thus, the participation of both would result in duplicative filings*.
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> . . . *[I]f [Section 7540(a)] were applied in an overly literal manner* in the context of constitutional challenges to legislative enactments containing a wide range of topics that potentially affect many classes of citizens, institutions, organizations, and corporations, such *lawsuits could sweep in hundreds of parties and render the litigation unmanageable*. . . . However, requiring the joinder of all such parties would undermine the litigation process.
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> . . . .
>
> . . . [T]he guiding inquiry in any discussion of indispensability is whether justice can be done in the absence of the parties asserted to be necessary. . . . [A]chieving justice is not dependent upon the participation of all of those persons. . . .

Id. at 567-69, 572, 838 A.2d at 581-85 (citations and footnotes omitted) (emphasis added).

Here, pursuant to City of Philadelphia, the Court must consider the Academy's requested relief. A review of the Complaint reveals that the Academy seeks a declaration that the *Department* must reimburse the District at the 150% tuition rate under Section 2561(6) of the School Code. (Compl. ¶ 34.) Although Section 2561(6) refers only to the charge to the home school districts, the Academy does *not* seek a declaration that the home school districts must pay at the 150% tuition rate. In other words, when our Court considers the relief the Academy seeks, the Complaint only pertains to whether the Department must pay the District at the 150% tuition rate under Section 2561(6) where there is no fixed home school district. Moreover, this Court may be able rule on the applicability of Section 2561(6) to the Department without affecting the obligations of the home school districts under Section 2561(6). Thus, the home school districts are not

indispensable parties. Accordingly, we overrule the Department's preliminary objection on this issue.

Finally, the Department asserts that the Academy has failed to state a claim upon which relief can be granted because, it argues, Section 2561(6) of the School Code clearly does not apply in this situation, i.e., where a school district does not "administer[] and deliver[] the educational services . . . at the institution itself." 24 P.S. § 25-2561(6). The Department contends that this section, which authorizes a 150% reimbursement, will never apply here because *the District* is not providing the actual educational services to the adjudicated youth *at the Academy*, although it is alleged to be "the institution itself";[8] the Academy is providing such services pursuant to the Agreement. The Academy responds that the District retains its non-delegable duty to administer and deliver educational services to non-resident adjudicated youth and does so at the institution itself, i.e., the Academy, through the Agreement.

After reviewing Section 2561(6), we conclude that the interpretation of this section is not so clear and unambiguous that the Department's preliminary objection should be sustained and the Academy's Complaint dismissed in its entirety at this stage. This is particularly so where the Department allegedly did reimburse the District, on behalf of the students' home school districts, at the higher, 150% reimbursement rates in 2001 and 2002. This alleged reimbursement appears to support the conclusion that the Department has, in the past, interpreted this section differently than it does now. Arguably, the Department's past

[8] This Court notes that, according to the Complaint, the adjudicated youth reside and attend school at the Academy. (Compl. ¶¶ 5-6, 9.)

interpretation raises the question of whether the District could be found to be administering the services through its Agreement with the Academy. Additionally, our Court notes that Section 2561(6) has not yet been interpreted by this, or any, Court. Given that the Department, itself, appears to have interpreted this section in different ways, along with the lack of existing judicial interpretation, we conclude that this issue is not "clear and free from doubt" and, therefore, the Department's preliminary objection regarding this issue should not be sustained at this preliminary stage. Pennsylvania AFL-CIO, 563 Pa. at 114, 757 A.2d at 920.

For the foregoing reasons, we overrule the Department's preliminary objections.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Summit School, Inc., t/d/b/a Summit Academy, Petitioner	:	
v.	:	No. 20 M.D. 2011
Commonwealth of Pennsylvania, Department of Education, Respondent	:	

O R D E R

NOW, December 1, 2011, the Preliminary Objections of the Commonwealth of Pennsylvania, Department of Education (Department) to the Amended Complaint for Declaratory Judgment (Complaint) filed by The Summit School, Inc., t/d/b/a Summit Academy (Academy) are hereby **OVERRULED**. The Department shall file its Answer to the Academy's Complaint within thirty (30) days of the date of this Order.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Summit School, Inc., t/d/b/a Summit Academy, Petitioner	:	
v.	:	No. 20 M.D. 2011
	:	Submitted: July 22, 2011
Commonwealth of Pennsylvania, Department of Education, Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

CONCURRING AND DISSENTING OPINION
BY SENIOR JUDGE FRIEDMAN FILED: December 1, 2011

I agree with the majority that The Summit School, Inc., t/d/b/a/ Summit Academy (Academy), has standing to challenge the failure of the Department of Education (Department) to reimburse the Butler Area School District (District) at the 150% tuition rate under section 2561(6) of the Public School Code of 1949 (School Code).[1] I also agree that the Academy was not required to join all school districts as indispensable parties to this action. However, I disagree that the language of section 2561(6) of the School Code does not clearly and unambiguously preclude the Academy from obtaining any relief in this case. Accordingly, I respectfully dissent.

[1] Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §25-2561(6).

Section 2561(6) of the School Code provides as follows:

> (6) Institution Tuition Charge. When the public school district administers and delivers the educational services required by this act to a child referred to an institution, pursuant to a proceeding under 42 Pa. C.S. Ch. 63 (relating to Juvenile Matters), at the institution itself, the tuition to be charged to the district of residence of such child shall be one and one-half times the amount determined in accordance with clauses (1) through (5), but not to exceed the actual cost of the educational services provided to such child.

24 P.S. §25-2561(6). Thus, when a public school district administers and delivers the requisite educational services at the institution to which a child had been referred, the district is entitled to the 150% tuition rate.

Here, the Academy is the institution to which children have been referred, and the Academy is administering and delivering the requisite educational services to those children. As indicated, the 150% tuition rate only applies if the District provides the services at the Academy; if the Academy provides the services, the District is not entitled to the 150% rate. Although the Academy has a contract with the District for the provision of services at the Academy, the Academy is not the District. Thus, the Academy would not be entitled to relief under section 2561(6).

ROCHELLE S. FRIEDMAN, Senior Judge