

**PT 08-18**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS**  
**DEPARTMENT OF REVENUE**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**CHICAGO, ILLINOIS**

---

---

**IN RE:**

**EXCEPTIONAL DEVELOPMENTAL  
INSTITUTE,**

**APPLICANT**

**Docket No: 06-PT-0064**

**Real Estate Exemption  
For 2004 Tax Year**

**P.I.N. 31-25-103-065-0000  
(part of)**

**Cook County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

---

---

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Francis X. Speh, Jr. , on behalf of Exceptional Developmental Institute; Mr. Scott E. Longstreet, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., on behalf of Intervenor, Village of Park Forest; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:** At issue in this proceeding is whether 45% of the building and site located on Cook County Parcel Index Number 31-25-103-065-0000 (hereinafter the “subject property”) should be exempt from 2004 real estate taxes under Section 15-65 of the Property Tax Code, as property used exclusively for charitable purposes. 35 ILCS 200/15-65. This controversy arose as follows: Exceptional Developmental Institute (hereinafter “EDI”) filed a Property Tax Exemption Complaint with the Cook County Board of Review seeking exemption from 2004 real estate taxes for P.I.N. 31-25-103-

065-0000. The Board reviewed EDI's complaint and recommended "no action," because "litigation [was] pending." On May 18, 2006, the Illinois Department of Revenue (hereinafter "Department") issued a "Non-homestead Property Tax Exemption Certificate" to EDI in which it recommended that 55% of the building and site was taxable ("property not in exempt use") and that 45% of the building and site was exempt for 100% of the 2004 tax year. Dept. Ex. No. 1. The 55% exemption denial for the building and site on the subject property was not protested by EDI and is not at issue in these proceedings. Tr. p. 15. On August 15, 2006, Intervenor, Village of Park Forest (hereinafter the "Village"), filed an appeal of the exemption for 45% of the building and site on the subject property.

Beginning August 5, 2008 and continuing through August 11, 2008, a formal administrative hearing was held with testimony from Lawrence Kerestes, Director of Community Development for the Village, Kathy Fisher, Housing Inspector and Code Enforcement Official for the Village, Lucy Bibbs, President and Executive Director of EDI, Tonya Fielding, daughter of Lucy Bibbs and an employee of EDI, Sonya Bibbs, daughter of Lucy Bibbs and an employee of EDI, Ramona Messex, an office worker for EDI, and Robert Fielding, son-in-law of Lucy Bibbs, husband of Tonya Fielding, and a maintenance worker for EDI. Following a careful review of the testimony and evidence, it is recommended that the Department's May 18, 2006, determination that 45% of the building and site was exempt should be reversed and that the 45% of the building and site at issue should not be exempt from 2004 property taxes.

**FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that 45% of the building and site located on Cook County P.I.N. 31-25-103-065-0000 was in exempt ownership and use in tax year 2004. Tr. pp. 42-43; Dept. Ex. No. 1.
2. The subject property is located at 320 Wildwood Drive in Park Forest. Tr. p. 49.
3. EDI was incorporated under the "General Not for Profit Corporation Act of Illinois" on April 12, 1990. According to EDI's Articles of Incorporation, its purposes are "charitable and educational." Tr. pp. 371-372; Intervenor's Ex. No. 8.
4. Lucy Bibbs has been Executive Director of EDI since its incorporation in 1990. Lucy Bibbs has been President of EDI since 2000. From 1990 to 2000, James Bibbs, Lucy's husband, was President of EDI. When EDI was incorporated, Elizabeth Robinson, Lucy's mother, was Corporate Secretary of EDI. Elizabeth Robinson also served as infant room teacher at EDI. When EDI was incorporated, Joe Booker Robinson, Lucy's father, was Treasurer of EDI. Mr. Robinson also had a construction business and did work for EDI. Tr. pp. 170-172, 220; Intervenor's Ex. No. 8.
5. Lucy Bibbs testified that in 2004, EDI operated day care centers at six locations: 15765 South Park Avenue in South Holland (property owned by Lucy Bibbs); 16733 South Wood Street in Hazel Crest (property owned by Lucy Bibbs); 22323 Thomas Drive in Richton Park; 9 North Street in Park Forest; 18225 Fontainebleau in Hazel Crest; and 380 Indianwood in Park Forest. Tr. pp. 524-527.
6. In 2004, EDI leased the two properties owned by Lucy Bibbs, 15765 South Park Avenue in South Holland and 16733 South Wood Street in Hazel Crest, from Lucy Bibbs. These properties were not exempt from property taxes. The leases for both

- properties included escalation clauses which called for the rent to increase every year. The lease agreement for the South Park Avenue property called for rental payments of \$4,500 in the first six months of 2004 and \$5,500 for the second six months of 2004. The lease agreement for the South Wood Street property called for monthly rental payments of \$4,500 for each month of 2004. EDI paid the property taxes and maintenance on the properties. Tr. pp. 234-235, 347-354, 528-532.
7. Sonya Bibbs is Lucy Bibbs' daughter. Sonya has worked at EDI since 1989 as a cook, teacher's aide, teacher and day care center director. Tr. pp. 626-630.
  8. Tonya Fielding is Lucy Bibbs' daughter. Tonya has worked at EDI since 1989 and became a day care center director at EDI in 1993. Tonya was Corporate Treasurer of EDI in 2004. Tr. pp. 210-211, 214, 231.
  9. EDI has employed Lucy Bibbs' sister, Savannah Riley, as director of one of EDI's day care centers, Willie Riley, Savannah's husband, as a bus driver and food deliverer, Erica Riley, Savannah's daughter, as a teaching assistant, and Chauncey Riley, Savannah's son, as an office assistant. Tr. pp. 219-220.
  10. EDI has employed Lucy Bibbs' niece, Latonya McGhee, as a director of one of EDI's day care centers, Mary Hill (referred to by Tonya Fielding as her "auntie") as a teacher, Robert Fielding (Tonya Fielding's husband) as a maintenance supervisor, Lawrence Bibbs (James Bibbs' brother) for maintenance work, grounds-keeping and deliveries, Darryl Ruby (Lucy Bibbs' nephew) for maintenance work, and Jeffrey Seaton (Lucy Bibbs' nephew) as executive director and office manager. Tr. pp. 219-222.

11. EDI employees included cooks, directors, directors' assistants, teachers, teachers' assistants, high school aids, volunteers, maintenance employees and drivers. Tr. p. 282.
12. In 2004, children of EDI employees were allowed to attend EDI for free. Tonya Fielding's children attended EDI for free. Tr. pp. 222-223.
13. On March 8, 2001, the "President and Board members" of EDI granted a "general power of attorney" to Lucy Bibbs, with "full powers and authority" to, *inter alia*, sell, deal, buy, trade, lease, mortgage, assign, rent or dispose of any of EDI's real or future property, the right to perform all contracts, the right to borrow, lend, invest or reinvest funds on any terms, and the right to retain any accountant or attorney. The "General Power of Attorney" is signed by Lucy Bibbs as "President," Elizabeth Campbell as "Secretary," and Shirley Powell as "Director." Tr. pp. 721-724; Applicant's Ex. No. 7.
14. In 2004, EDI did not have a written policy as to when EDI would waive tuition or fees. Lucy Bibbs, alone, determined what tuition and fees would be waived, if any. Tr. pp. 248-249, 634-635.
15. EDI's Website in 2004 stated that "[T]he purpose of EDI Child Care Center is to offer superior child care developmental, program plan and staff." "The services will be adequate, affordable, accommodating and convenient for low income families as well as high income families." Page 6 of the Website states that "[W]e accept Self-Pay, DCFS-Foster Care, IDHS Funds, Public Aid and Child Care Initiatives." Tr. pp. 386-399; Intervenor's Ex. No. 20.

16. EDI's Form 990, "Return of Organization Exempt from Income Tax," for fiscal year ending June 30, 2004 and for fiscal year ending June 30, 2005 are signed by "Lucy Bibbs" as "Executive Director." The Form 990's for both fiscal years were signed "under penalties of perjury," with the attestation that the signatory examined the return, including accompanying schedules and statements, and to the best of the signatory's knowledge and belief, the Forms were true, correct, and complete. Tr. pp. 157, 163, 363; Intervenor's Ex. Nos. 17 and 6 (respectively).
17. For fiscal year ending June 30, 2004, Lucy Bibbs was paid a salary of \$95,833 from EDI. For fiscal year ending June 30, 2005, Lucy Bibbs was paid a salary of \$85,000 from EDI. Tr. p. 153; Intervenor's Ex. Nos. 17 and 6 (respectively).
18. EDI's Form 990's for fiscal year ending June 30, 2004 and for fiscal year ending June 30, 2005 show "Program Service Revenue" of \$2,246,867 and \$1,703,380, respectively. This is the only revenue item shown on the Form 990's. In fiscal year ending June 30, 2004 and fiscal year ending June 30, 2005, EDI had an excess of revenue over expenses of \$647,421 and \$385,108, respectively. Tr. pp. 355-358; Intervenor's Ex. Nos. 17 and 6 (respectively).
19. In 2004, EDI leased rental units to two commercial tenants, a cleaners and a pizza restaurant, located at 380 Indianwood in Park Forest. The cleaners paid EDI rent of \$1,100/month in 2004. The pizza restaurant paid EDI rent of \$1,600/month in 2004. EDI paid the property taxes on the rental property. Tr. pp. 359-362, 551-553, 619-620.
20. Line 6(a), "Gross Rents," on EDI's Form 990's for fiscal years ending June 30, 2004 and June 30, 2005 does not contain a dollar amount for the rental income from the

tenants at 380 Indianwood in Park Forest. Line 78(a) of both Form 990's contains the question: "Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?" On both returns, this line is checked "No." EDI did not file "Form 990-T's," showing unrelated business income of \$1,000 or more, for either fiscal year. Tr. pp. 361-367, 444-447; Intervenor's Ex. Nos. 17 and 6 (respectively), 71 and 72.

21. EDI's PTAX-300, "Application for Non-homestead Property Tax Exemption," signed by Lucy Bibbs on May 9, 2005, states in Part 4 that "audited financial statements for the most recent year" are attached. The audited financial statements for June 30, 2004, attached to the PTAX-300, show all of EDI's revenue as "Fees for Service." There is no dollar amount for the rental income from the two tenants at 380 Indianwood in Park Forest. Intervenor's Ex. No. 46.
22. A fee schedule for "Exceptional Developmental Institute" for the period beginning in 2002 to September, 2004, shows fees for the following schools: Einstein Children's Academy ("ECA"), Innovative Child Care ("ICC"), Institute for Academic Development ("IAD") and Exceptional Development Institute. The fee schedule for these locations shows weekly fees for infants (up to 2 ½ years old) were \$180 at each location. Weekly fees for children, 31 months to 12 years old, were \$145 at ECA and \$140 at the other locations. In addition to the weekly fees, there were fees for curriculum, registration, language materials, "high reach" program, and weekly readers. The registration fee was \$50 annually for each student. Other fees increased with the age of the child. The fee schedule also shows fees for "1/2 days," and "drop-ins," and "[T]ransportation services for daycare students to & from home extra \$40."

- The fee schedule does not have a notation that fees or tuition could be waived. Tr. pp. 250-257; Intervenor's Ex. No. 42.
23. A fee schedule for "Exceptional Developmental Institute" for the period beginning in September, 2004, through September, 2006 shows fees for the following schools: Einstein Children's Academy ("ECA"), Innovative Child Care ("ICC"), Institute for Academic Development ("IAD") and Exceptional Development Institute. The fee schedule for these locations shows weekly fees for infants (up to 2 ½ years old) were \$190 at each location. Weekly fees for children, 2 to 3 years of age, were \$160 at each location. Weekly fees for children, 31 months to 12 years, were \$145 at each location. In addition to the weekly fees, there were fees for curriculum materials, registration, language materials, "high reach" program, and weekly readers. The registration fee was \$50 annually for each student. Other fees increased with the age of the child. The fee schedule also shows fees for "1/2 days," and "drop-ins," and "[T]ransportation services for daycare students to & from home extra \$40." The fee schedule does not have a notation that fees or tuition could be waived. Tr. pp. 250-257; Intervenor's Ex. No. 43.
24. An "Affidavit of Specific Use," attested to and signed by Lucy Bibbs on May 9, 2005, submitted with EDI's PTAX-300, states that "[T]he Institute charges a maximum rate per week of \$125.00." This statement in the Affidavit contradicts the fee schedules as detailed in Finding of Fact No. 22, which shows a maximum rate per week of \$180, without additional fees, and Finding of Fact No. 23, which shows a maximum rate per week of \$190, without additional fees. Tr. pp. 399-403; Intervenor's Ex. Nos. 42, 43 and 46.

25. The “Affidavit of Specific Use,” attested to and signed by Lucy Bibbs on May 9, 2005, submitted with EDI’s PTAX-300, states that “[EDI] limits rate increases to 3 or 4 year intervals...” This statement contradicts the fee schedules as detailed in Findings of Fact Nos. 22 and 23 where rates changed at two year intervals. Tr. pp. 463-464; Intervenor’s Ex. Nos. 42, 43 and 46.
26. The “Affidavit of Specific Use” attested to and signed by Lucy Bibbs on May 9, 2005, submitted with EDI’s PTAX-300, states that “[T]he Institute maintains a low-income, parent financial benefit policy by offering a reduction or waiver of tuition fees, registration fees and transportation fees. A copy of the written policy is attached as Exhibit C.” “Exhibit C” states that EDI “fulfills one of its charitable obligations by offering low-income families several financial benefits that would enable them to secure quality child care. The following categories of financial requirements in appropriate circumstances may be reduced or waived.” Categories: “Tuition: a) Waive or Reduce Tuition; b) Accept state funding (lower than EDI rate); c) Waive co-payment; d) Late fees.” “Fees: a) Registration fees; b) Transportation; c) Curriculum fee; d) Picture; e) Fieldtrips; f) Project Supplies.” “Families who are interested in financial benefits must provide proof of their income status. The Institute reserves the right, in its discretion, to determine and to what extent assistance may be made available.” In 2004, Lucy Bibbs was the only person who was able to waive tuition or fees for students at EDI. Tr. pp. 464-466, 520-522, 694-695; Intervenor’s Ex. No. 46.
27. The “Affidavit of Specific Use,” attested to and signed by Lucy Bibbs on May 9, 2005, submitted with EDI’s PTAX-300, states that “[t]he Institute has installed

- administrative offices and classrooms for immediate occupancy and use.” No classrooms were installed at the subject property in 2004. No classrooms have been installed at the subject property to date. Tr. pp. 467-468; Intervenor’s Ex. No. 46.
28. The “Affidavit of Specific Use,” attested to and signed by Lucy Bibbs on May 9, 2005, submitted with EDI’s PTAX-300, states that “[T]he Institute has caused to be filed an occupancy permit with the Village of Park Forest, Illinois.” No occupancy permit has been filed with the Village of Park Forest. Tr. pp. 64-65, 469-470; Intervenor’s Ex. No. 46.
29. An advertisement, paid for by EDI, in the 2004 Ameritech “Yellow Pages” shows the following: “Innovative Child Care Corporation” (“three locations to serve you”), EDI (6 locations), and “Creative Child Care Kiddy Kabby,” “Children’s Transportation Service,” “Transportation for individual children, day care centers and children’s agencies.” “Payments” in the advertisement are listed as “Self-pay, DCFS-Foster Care, IDHS Initiatives, Public-Aid, Child Care Initiatives.” The advertisement has no notation that tuition or fees could be waived. Tr. pp. 498-500, 699-704; Intervenor’s Ex. No. 35.
30. The “Children’s Transportation Service” mentioned in EDI’s Yellow Pages advertisement and “Transportation services for daycare students to & from home extra \$40” mentioned in EDI’s fee schedules was provided by “Creative Child Care Kiddy Kabby (“Kiddy Kabby”),” started by Lucy Bibbs. The \$40 charge was a weekly fee. In 2004, Lucy Bibbs was President and Executive Director of Kiddy Kabby. In 2004, EDI owned vans and leased the vans to Kiddy Kabby for \$800/month. Tr. pp. 275-279, 472-480, 635-636, 708.

31. Line 80(a) of EDI's Form 990's for fiscal years ending June 30, 2004 and June 30, 2005, asks the following question: "Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?" EDI answered "No" on Line 80(a), omitting any mention of Kiddy Kabby. Tr. pp. 481-482; Intervenor's Ex. No. 46.
32. EDI's leasing of vans to Kiddy Kabby in 2004 at \$800/month is not reflected in EDI's Form 990's for fiscal years ending June 30, 2004 and June 30, 2005 or on the financial statements submitted to the Department with EDI's PTAX-300. Intervenor's Ex. Nos. 17 and 6 (respectively), 46.
33. In 2004, parents of children enrolled at EDI were required to sign a "Payment Agreement," attached to an enrollment form. The Payment Agreement contains the following statements, *inter alia*: "I am directly responsible for all debts incurred during my child(s) enrollment including registration fees, tuition, supplies and materials. I am directly responsible for payments for this child(s), even though payments are made by an agency or funding." "A non refundable registration fee of \$ \_\_\_\_ is due upon enrollment. One week tuition is due on the starting date and also their curriculum." "Payments that fall behind one (1) week and/or is excessively late, children will be dropped immediately from the program until payments are made in full." "Tuition is due each Monday of the Week. Tuition is considered late if paid after 10:00 A.M. on Tuesday and a \$ \_\_\_\_ late fee is due. If tuition is delinquent after one week, the child will be dropped from the program." "Full tuition is due when children are out of school for whatever reason. A re-enrollment fee is due if the child

is out for three (3) weeks or more.” The enrollment form states that “[T]his agreement shall be terminated if any one or more parts are not honored or violated.” The “Payment Agreement” does not have a notation that fees or tuition could be waived. Tr. pp. 266-272; Intervenor’s Ex. No. 55.

34. In 2004, parents who applied for government assistance for children enrolled at EDI signed a “Parent Monthly Co-Payment Agreement” with EDI. This Agreement contains the following provision: “I, \_\_\_\_\_, will be responsible for my child(ren) monthly co-payment and agree with the terms as outlined in this agreement. THE CO-PAYMENT IS DUE ON THE FIRST OF EACH MONTH. In the event my payment falls behind, I understand my child(ren) will be dropped from the program and I will still be responsible for any past due payments. A \$10.00 late fee will apply after the first.” Government assistance programs included Child Care Initiative, Teen Parent, Office of Child Development (for foster children) and Woman’s Resource Assistance Program. The “Parent Monthly Co-Payment Agreement” does not have a notation that fees or tuition could be waived. Tr. pp. 272-275, 300; Intervenor’s Ex. No. 40.

35. The graduation fee for EDI’s kindergarten, pre-school and junior honor graduates was \$80. Each graduate received two admission passes for the June 19, 2004 ceremony. Additional tickets were \$12/person. There is no notation on the notice to parents that graduation fees may be waived. Tr. pp. 404-405, 555-558; Intervenor’s Ex. No. 62.

36. In 2004, EDI sent 27 letters to parents stating that “[W]e are sorry to inform you that your child/children’s Daycare Funding and transportation has been cancelled for the following reasons:” “[Funding] not determined by DCFS; Funding canceled by

DCFS; [Funding] not approved by DCFS; Non-Payment.” “Therefore, [child’s name] will be dropped from our Programs immediately.” Tr. pp. 449-450, 570-581, 663-665; Intervenor’s Ex. No. 73.

37. In 2004, EDI did not receive any public or private donations. Tr. pp. 471-472.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that the Intervenor has demonstrated, by the presentation of testimony and through exhibits and argument, sufficient evidence to support the reversal of the exemption from 2004 property taxes for 45% of the building and site located on Cook County P.I.N. 31-25-103-065-0000. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property

from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code which states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) \*\*\*
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for exemption, the applicant provides affirmative evidence that the home or facility is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended.<sup>1</sup>  
35 ILCS 200/15-65

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). EDI applied for exemption of the subject property

---

<sup>1</sup> EDI is a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. There is no provision in EDI's Bylaws for waiver or reduction of fees for the child care centers and there is no provision for waiver or reduction of fees in EDI's Articles of Incorporation. Intervenor's Ex. Nos. 7, 8 and 46. It is also noted that EDI did not make any arguments supporting exemption under 35 ILCS 200/15-65(c). I conclude that the subject property does not satisfy the statutory requirements of (c)(i) or (c)(ii) in 35 ILCS 200/15-65(c).

under 35 ILCS 200/15-65(a), as an “institution of public charity.” In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"), the Illinois Supreme Court set forth guidelines for determining whether an organization qualifies as an institution of public charity: (1) the organization's funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (2) the charity does not provide gain or profit in a private sense to any person connected with it; (3) the organization has no capital, capital stock or shareholders and earns no profits or dividends; (4) the charity is dispensed to all who need and apply for it and the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes. *Id.* at 156.

The Illinois Supreme Court articulated the criteria in Korzen “to resolve the constitutional issue of charitable use.” Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273 (2004). Courts consider and balance the criteria by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Comm's on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2d Dist. 1965). The record in this case clearly shows that EDI possesses none of the characteristics of a charitable organization as delineated in Korzen, and it is for this reason that I recommend that the Department's exemption of 45% of the building and site be reversed.

In order to qualify for an exemption under the charitable exemption statute, 35 ILCS 200/15-65, the property at issue must be owned by a charitable organization. On May 1, 2001, "Christian Children Center" quitclaimed its interest in the subject property, Cook County P.I.N. 31-25-103-065-000, to "The Exceptional Developmental Institute." The Quitclaim Deed states that "Lucy M. Bibbs" is President of Christian Children Center. It is noted on the Quitclaim Deed that "the instrument was prepared by Lucy M. Bibbs." The Quitclaim Deed, dated May 1, 2001, was recorded on May 21, 2004. Intervenor's Ex. No. 46. No board of directors' resolutions or powers of attorney were admitted into evidence for Christian Children Center showing that Lucy Bibbs had the authority from Christian Children Center to quitclaim the subject property to EDI.

Lucy Bibbs has been Executive Director of EDI since its incorporation in 1990. Lucy Bibbs has been President of EDI since 2000. Tr. pp. 170-172. On March 8, 2001, the "President and Board members" of EDI granted a "general power of attorney" to Lucy M. Bibbs, with "full powers and authority" to, *inter alia*, sell, deal, buy, trade, lease, mortgage, assign, rent or dispose of any of EDI's real or future property, the right to perform all contracts, the right to borrow, lend, invest or reinvest funds on any terms, and the right to retain any accountant or attorney. The "General Power of Attorney" is signed by Lucy Bibbs as President, Elizabeth Campbell as Secretary, and Shirley Powell as Director. Tr. pp. 721-724; Applicant's Ex. No. 7. In effect, Christian Children Center quitclaimed its interest in the subject property, in a deed signed by Lucy Bibbs, prepared by Lucy Bibbs, to EDI, whose President and Executive Director is Lucy Bibbs, with a General Power of Attorney, signed by, *inter alia*, Lucy Bibbs.

I am unable to determine from the record in this case that Lucy Bibbs had the authority from Christian Children Center to quitclaim the subject property to EDI. Moreover, a quit-claim deed conveys whatever title or interest the grantor may have in the land at the time it was given, and only such title and interest. In re Marriage of Didier, 318 Ill. App. 3d 253 (1<sup>st</sup> Dist. 2000). A quitclaim deed conveys only the grantor's interests in property described therein. The quit-claim deed passes no greater or better title than belonged to the grantor. Bryant v. Lakeside Galleries, 402 Ill. 466 (1949). I am unable to conclude that EDI owns the subject property because the record of this case contains no testimony or evidence as to what interest or title Christian Children Center had in the subject property when it quitclaimed its interest to EDI. A quitclaim deed conveys only the interest of the grantor, and without testimony or documentary evidence as to what interest Christian Children Center had in the subject property, I can reach no conclusion as to what interest it transferred to EDI.

A statutory requirement for exemption of property used for charitable purposes, according to 35 ILCS 200/15-65, is that the property must be owned by a charitable organization. EDI has not shown, by clear and convincing evidence, that it owns the subject property at issue in this case. This evidentiary deficiency provides sufficient reason, by itself, to deny EDI exemption for 45% of the subject property under 35 ILCS 200/15-65. However, even if the quitclaim deed was legally sufficient to transfer ownership of the subject property to EDI, the property does not qualify for exemption because of the reasons articulated below.

**Guideline 1: The organization's funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the**

**charter.** The record in this case clearly shows that EDI does not derive its funds from public and private charity. In 2004, EDI did not receive any public or private donations. Tr. pp. 471-472. At the evidentiary hearing, Lucy Bibbs was asked the following question: “In fact, all of the revenue received by EDI was for the payment of child care services, correct?” She responded “[C]orrect.” Tr. p. 472.

EDI’s Form 990, “Return of Organization Exempt from Income Tax,” for fiscal year ending June 30, 2004 shows \$2,246,867 as “Program service revenue including government fees and contracts.” The amount is further identified as “Fees” in the Form 990. Intervenor’s Ex. No. 17. EDI submitted a “Comparative Income Statement” as an attachment to its PTAX-300, “Application for Non-homestead Property Tax Exemption.” The Income Statement shows “Fees for Service” in the amount of \$2,246,867 for fiscal year ended June 30, 2004. Intervenor’s Ex. No. 46. Additionally, EDI’s Form 990 for fiscal year ending June 30, 2005 shows \$1,703,380 as “Direct public support.” Intervenor’s Ex. No. 6. This is the only category of revenue on the Form 990 for that fiscal year.

EDI submitted an “Affidavit of Specific Use” with its PTAX-300. The Affidavit was attested to and signed by Lucy Bibbs on May 9, 2005. The Affidavit states that “[T]o date, the Department of Human Services funds 97% of the children enrolled at Exceptional Developmental Institute’s facilities” and “[M]ost of the children enrolled at Exceptional Developmental Institute are funded by the Department of Children’s Services...” Intervenor’s Ex. No. 46.

It must be noted here that Lucy Bibbs’ testimony that all of EDI’s revenue was “for the payment of child care services” is inaccurate and contradicted by other

testimony. Moreover, EDI's Form 990's for both fiscal years and the Comparative Income Statement that EDI submitted to the Department with its PTAX-300 are inaccurate and misleading. There was considerable testimony elicited by the Intervenor at the evidentiary hearing about revenue received by EDI that is not reflected in any financial statements. In 2004, EDI leased two rental units to commercial tenants, a cleaners and a pizza restaurant, located at 380 Indianwood in Park Forest. The cleaners paid EDI rent of \$1,100/month in 2004. The pizza restaurant paid EDI rent of \$1,600/month in 2004. Tr. pp. 359-362, 551-553, 619-620. Line 6(a), entitled "Gross Rents," on EDI's Form 990 for fiscal years ending June 30, 2004 and June 30, 2005 does not contain a dollar amount for the rental income from the tenants at 380 Indianwood in Park Forest. Line 78(a) of both Form 990's contains the question: "Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?" On both returns, this line is checked "No." EDI did not file a "Form 990-T," showing unrelated business income of \$1,000 or more, for either fiscal year. Tr. pp. 361-367, 444-447; Intervenor's Ex. Nos. 17 and 6 (respectively), 71 and 72.

Ms. Bibbs testified she was not an accountant, but that she had provided her accountant "with all the documentation he requested to prepare" the Form 990's. Tr. pp. 509-510. Ms. Bibbs was specifically asked at the evidentiary hearing if she informed EDI's accountants about the rental income. She replied: "The bookkeeper, I don't know how she notated it on her ledger. So usually whatever she takes in, she notates it. So I didn't have any reason to look at it or-." Tr. pp. 547-548. Tonya Fielding, Lucy Bibbs' daughter, was Treasurer of EDI in 2004. She testified that she did not review EDI's federal income tax returns. Tr. pp. 239-240.

EDI's PTAX-300, signed and attested to by Lucy Bibbs on May 9, 2005 states at Part 4 that "audited financial statements for the most recent year" are attached.<sup>2</sup> The financial statements for June 30, 2004, attached to the PTAX-300, show all of EDI's revenue as "Fees for Service." There is no dollar amount for the rental income from the tenants at 380 Indianwood in Park Forest. Intervenor's Ex. No. 46. If the Department relied on the Comparative Income Statement in granting EDI an exemption for 45% of the subject property, this reliance was misplaced and unwarranted.

Lucy Bibbs testified at the evidentiary hearing that in the year at issue in this proceeding, 2004, EDI was awarded "like 500 and some thousand" "in insurance proceeds for the destruction of one of [EDI's] schools." The insurance proceeds were "a result of a fire at one of EDI's schools where it lost personal property such as the contents of the school..." Tr. p. 535. "It was like 150" that was payable from these proceeds in 2004. Tr. pp. 808-809. These insurance proceeds are not reflected in EDI's Form 990's for fiscal year ended June 30, 2004 or June 30, 2005 or in the "Comparative Income Statement" submitted to the Department by EDI with its PTAX-300.

"Creative Child Care Kiddy Kabby" ("Kiddy Kabby") provided transportation services for child care patrons to and from their home. There was a \$40 weekly fee for this service. Kiddy Kabby was started by Lucy Bibbs. In 2004, Lucy Bibbs was President and Executive Director of Kiddy Kabby. Ms. Bibbs testified that EDI did not own Kiddy Kabby. Tr. p. 699. Ms. Bibbs was "not sure" if Kiddy Kabby and EDI had the same Board of Directors in 2004. Tr. pp. 472-473. The State of Illinois reimbursed Kiddy Kabby at a certain rate for transporting some children that attended EDI's day care

---

<sup>2</sup> There is no notation on the "Comparative Income Statement" that the statements are audited. No auditor's opinion was attached to the Comparative Income Statement.

centers, but it is unclear from Ms. Bibbs' testimony what this rate was in 2004. Tr. pp. 476-479. Kiddy Kabby's financial statements were not admitted into evidence.

An advertisement, paid for by EDI, from the 2004 Ameritech "Yellow Pages" shows the following: "Innovative Child Care" ("three locations to serve you"), EDI (6 locations), and "Creative Child Care Kiddy Kabby," "Children's Transportation Service," "Transportation for individual children, day care centers and children's agencies." Tr. pp. 498-500, 699-704; Intervenor's Ex. No. 35. A similar advertisement in the 2003 Ameritech "Yellow Pages" for EDI and Kiddy Kabby contains the notation "Under Same Management." Tr. pp. 702-703.

There was testimony at the evidentiary hearing that in 2004, EDI owned vans and leased the vans to Kiddy Kabby at \$800/month. Tr. pp. 275-279, 472-480, 635-636, 708. Over the course of the 12 months in 2004, this leasing should have generated revenue for EDI of \$9,600. Line 80(a) of EDI's Form 990's for fiscal year ending June 30, 2004 and June 30, 2005 asks the following question: "Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?" EDI answered "No" on Line 80(a), omitting any mention of Kiddy Kabby, on its Form 990's for fiscal year ending June 30, 2004 and June 30, 2005. Tr. pp. 481-482; Intervenor's Ex. No. 46. The "Under Same Management" notation in the 2003 "Yellow Pages" advertisement and the testimony on Kiddy Kabby forces me to conclude that Line 80(a) on the Form 990's for both fiscal years was not correctly answered by EDI. In addition, EDI's leasing of vans to Kiddy Kabby at \$800/month is not reflected in EDI's Form 990 for fiscal years ending June 30, 2004 and June 30, 2005

or on the Comparative Income Statement submitted to the Department with EDI's PTAX-300. Intervenor's Ex. Nos. 17, 6 and 46 (respectively).

According to EDI's Form 990's for fiscal year ending June 30, 2004 and June 30, 2005, EDI had an excess of revenue over expenses of \$647,421 and \$358,108, respectively. The "Net assets or fund balances at end of year" for June 30, 2004 were \$2,855,843. Sound accounting principles would require that the net assets that EDI ended with on June 30, 2004 would become the "Net Assets or fund balances at beginning of year" for the next fiscal year, beginning on July 1, 2004. However, the "Net assets or fund balances at beginning of year" for the next fiscal year, beginning July 1, 2004, were reported as \$9,015,641 on EDI's Form 990. Intervenor's Ex. Nos. 17 and 6. No explanation was offered at the evidentiary hearing for the \$6.2 million discrepancy between the ending net assets, June 30, 2004, and the beginning net assets, July 1, 2004.

The second part of the Korzen guideline at issue here is concerned with whether the organization holds its funds in trust for the objects and purposes expressed in its charter. To this end, it is reasonable that an exclusively charitable organization holds funds in trust and exercises its expertise and experience to apply the funds to an identifiable charitable need. As will be discussed further in this Recommendation, the record in this case does not allow me to conclude that EDI serves any charitable purpose or provides any charity. Because of the inaccuracies in EDI's Form 990's and the Comparative Financial Statement included with EDI's PTAX-300, any discussion of how EDI holds and uses its "funds in trust" would be meaningless. The inaccuracies in EDI's accounting and tax records do not permit me to determine what EDI's "funds in trust" actually are. Because of the inaccuracies in its records, I conclude that EDI has not

proven, by clear and convincing evidence, that it possesses the characteristic of a charitable organization that its funds be derived mainly from private and public charity, and that the funds be held in trust for the objects and purposes expressed in the charter.

**Guideline 2: The charity does not provide gain or profit in a private sense to any person connected with.** The record in this case clearly shows that EDI does not possess the characteristic of a charitable organization that it not provide gain or profit in a private sense to any person connected with it. Rather, the testimony at the evidentiary hearing forces me to conclude that EDI provides substantial gain and profit to Lucy Bibbs and to her extended family.

From 1990 to 2000, James Bibbs, Lucy's husband, was President of EDI. There was no testimony at the evidentiary hearing as to what qualifications James Bibbs possessed to be President of EDI, a day care provider. When EDI was incorporated, Elizabeth Robinson, Lucy's mother, was Corporate Secretary of EDI. Elizabeth Robinson also served as infant room teacher at EDI. When EDI was incorporated, Joe Booker Robinson, Lucy's father, was Treasurer of EDI. Mr. Robinson also had a construction business and did work for EDI. Tr. pp. 170-172, 220; Intervenor's Ex. No. 8. There was no testimony at the evidentiary hearing as to what qualifications Joe Booker Robinson possessed to be Treasurer of EDI.

Sonya Bibbs is Lucy Bibbs' daughter. She has worked at EDI since 1989 as a cook, teacher's aide, teacher and day care center director. Tr. pp. 626-630. Tonya Fielding is also Lucy Bibbs' daughter. Tonya has worked at EDI since 1989 and became a day care center director at EDI in 1993. Tonya was Corporate Treasurer of EDI in 2004. Tr. pp. 210-211, 214, 231. Lucy Bibbs testified that EDI shared some of the

expenses for two Hummers, titled in Lucy Bibbs' name, but leased by EDI for use by Sonya and Tonya in 2004. Tr. pp. 165-167. Tonya testified that her father paid the insurance on her leased vehicle. Tr. p. 287. When Sonya was asked if EDI provided a car for her use in 2004, she replied "[I] don't know who provided the ride. I know I had a vehicle." When Sonya was asked if EDI provided any vehicles for other family members in 2004, she replied "[I]'m not sure who provided it, Ms. Bibbs or EDI." Tr. p. 632.

Tonya Fielding testified that EDI has employed, at various times, Lucy Bibbs' sister, Savannah Riley, as director of one of EDI's day care centers, Willie Riley, Savannah's husband, as a bus driver and food deliverer, Erica Riley, Savannah's daughter, as a teaching assistant, and Chauncey Riley, Savannah's son, as an office assistant.<sup>3</sup> Tr. pp. 219-220. EDI has also employed Lucy Bibbs' niece, Latonya McGhee, as a director of one of EDI's day care centers, Mary Hill (referred to by Tonya Fielding as her "auntie") as a teacher, Robert Fielding (Tonya Fielding's husband) as a maintenance supervisor, Lawrence Bibbs (James Bibbs' brother) for maintenance work, grounds-keeping and deliveries, Darryl Ruby (Lucy Bibbs' nephew) for maintenance work, and Jeffrey Seaton (Lucy Bibbs' nephew) as executive director and office manager. Tr. pp. 219-222. Robert Fielding, Tonya's husband, testified that he worked with Donnell Stamps in 2004, "who is a cousin, I believe," and Isaac Stamps, who is related to Tonya. Tr. pp. 764-765.

Testimony on the total number of employees that EDI had in 2004 was contradictory. Counsel for EDI stated in his opening argument that EDI was a "family business." "There is around, what, forty-two people working there now and there's, you know, maybe four or five family members who work there, too." Tr. p. 35. Tonya

---

<sup>3</sup> Lucy Bibbs testified that "[T]he whole Riley family hadn't worked for us since 1998." Tr. p. 689.

Fielding “estimated” that there were approximately eighty employees at EDI in 2004. According to Tonya, EDI employees included cooks, teachers, teachers’ assistants, directors, directors’ assistants, high school aids, volunteers, maintenance employees and drivers. Tr. p. 282. There was no testimony at the hearing as to the level, grade, or salary range of EDI employees. There was no documentary evidence presented as to how EDI’s salaries compared to other child care providers.

“The employees of a charitable institution are not compelled to perform free services in order that the institution may be charitable.” Yates v. Board of Review, 312 Ill. 367 (1924). “The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise.” 86 Ill. Admin. Code §130.2005(h). No evidence was presented at the hearing as to whether EDI’s salaries were reasonable. Without an explanation of the salary structure for the employees, I am unable to conclude that EDI’s revenues are devoted to the general purposes of the charity or that the revenue received by it does not inure to the benefit of its employees.

In 2004, children of EDI employees were allowed to attend EDI for free. Tonya Fielding testified that her two children attended EDI for free. Tr. pp. 222-223. Tonya Fielding was asked the following question: “And so in 2004, if any relatives of yours were working for EDI, they could send their children to EDI for free as well, correct?” She responded “Yes.” Tr. p. 223. There was no other testimony at the hearing as to how many employees’ children attended EDI for free in 2004. There was no testimony as to the costs to EDI of not charging employees’ children for tuition and fees and how this is accounted for on EDI’s Form 990’s or in EDI’s financial statements.

Ms. Bibbs testified that in 2004, EDI operated day care centers at six locations: 15765 South Park Avenue in South Holland (property owned by Lucy Bibbs); 16733 South Wood Street in Hazelcrest (property owned by Lucy Bibbs); 22323 Thomas Drive in Richton Park; 9 North Street in Park Forest; 18225 Fontainebleau in Hazelcrest; 380 Indianwood in Park Forest.<sup>4</sup> Tr. pp. 524-527. In 2004, EDI leased the two properties owned by Lucy Bibbs, 15765 South Park Ave in South Holland and 16733 South Wood Street in Hazel Crest, from Lucy Bibbs. These properties were not exempt from property taxes. The leases for the both properties included escalation clauses in which the rent increased every year. The lease agreement for the South Park property called for monthly rental payments of \$4,500 in the first six months of 2004 and \$5,500 for the second six months of 2004. The lease agreement for the South Wood property called for monthly rental payments of \$4,500 for all months of 2004. EDI paid the property taxes and maintenance on the properties. Tr. pp. 234-235, 347-354, 528-532. If there were written lease agreements for the two properties, the agreements were not introduced into evidence.

Ms. Bibbs testified that the South Park property only paid her rent for four months of the 2004 fiscal year. She did not remember which months were paid or not paid. Ms. Bibbs testified that the South Woods property only paid her rent for three months of the 2004 fiscal year. She testified that both properties did not have the funds to pay the remaining months. She did not take any legal action to evict the day care centers for

---

<sup>4</sup> Testimony and documentary evidence on the number of day care centers operated by EDI in 2004 was contradictory. Ms. Bibbs testified at one point in the hearing that EDI had four schools in 2004. Tr. pp. 738-739. EDI's PTAX-300, "Exhibit A" states that "[T]he Company operates (5) daycare centers." Intervenor's Ex. No. 46. EDI's "Yellow Pages" advertisement for 2004 shows four addresses for day care centers but states "six locations." Intervenor's Ex. No. 35. For purposes of this Recommendation, I have assumed that EDI operated 6 day care centers in 2004.

nonpayment of rent. Tr. pp. 528-531. EDI's "Comparative Income Statement" for June 30, 2004, submitted to the Department with its PTAX-300 lists "Rent" expense as \$264,000. Intervenor's Ex. No. 46. The same dollar amount is listed as "Occupancy" on EDI's Form 990 for year ending June 30, 2004. Intervenor's Ex. No. 17. "Occupancy" is \$168,000 on EDI's Form 990 for year ending June 30, 2005. Intervenor's Ex. No. 6. Ms. Bibbs' individual income tax forms were not admitted into evidence at the hearing so I am unable to reach a conclusion as to how much of the "Rent" or "Occupancy" expense was actually paid to Ms. Bibbs in the year at issue. It is unclear from the record what other "Rent" or "Occupancy" expenses were incurred by EDI in 2004. The lease payments from EDI to Lucy Bibbs and EDI's payment of property taxes and maintenance for the two properties increased Lucy Bibbs' equity in the properties and resulted in profit inuring to her.

For fiscal year ending June 30, 2004, Lucy Bibbs was paid a salary of \$95,833 from EDI. For fiscal year ending June 30, 2005, Lucy Bibbs was paid a salary of \$85,000 from EDI. Tr. p. 153; Intervenor's Ex. Nos. 17 and 6 (respectively). In this Recommendation, I previously discussed Kiddy Kabby which was started by Lucy Bibbs and "under the same management" as EDI. In 2004, Lucy Bibbs was President and Executive Director of Kiddy Kabby. Kiddy Kabby's financial statements were not admitted into evidence. The State of Illinois reimbursed Kiddy Kabby at a certain rate for transporting children but it is unclear from Ms. Bibbs' testimony what this rate was in 2004. Tr. pp. 476-479. Based on the interrelationship between EDI and Kiddy Kabby, it is logical to conclude that Kiddy Kabby made a profit from transporting children and that this profit also inured to Lucy Bibbs.

Based on the testimony and evidence admitted at the hearing regarding the free tuition and fees for the children of EDI employees, I must conclude that EDI provides gain and profit in a private sense to its employees and that a portion of the money received by EDI inures to their benefit. Because so many of Lucy Bibbs' relatives are employed by EDI and also benefiting from the provision of free tuition and fees for their children, I must conclude that EDI provides gain and profit in a private sense to Lucy Bibbs' relatives and that a portion of the money received by EDI inures to their benefit. Because of the rent paid by EDI to Lucy Bibbs for the two properties that EDI leases from Lucy Bibbs, I conclude that EDI provides gain and profit to Lucy Bibbs individually and that a portion of the money received by EDI inures to the benefit of Lucy Bibbs. Because of the interrelationship between EDI and Kiddy Kabby, I conclude that the profit made by Kiddy Kabby in transporting EDI day care students, inured to the benefit of Lucy Bibbs.

Illinois courts have recognized that a charitable organization does not lose its exemption by reason of the fact that those people who are able to pay for the services rendered by it are required to do so as long as all the money received by it is devoted to the general purposes of the charity, and no portion of the money received by it is permitted to inure to the benefit of any private individual engaged in managing the charity. Sisters of St. Francis v. Board of Review, 231 Ill. 317 (1907). The record in this case shows that a portion of the money received by EDI inures to its employees, many of whom are relatives of Lucy Bibbs, in the form of free tuition and fees for their children, and to Lucy Bibbs herself. I conclude that EDI has not proven, by clear and convincing

evidence, that it possesses the characteristic of a charitable organization that the organization not provide gain or profit in a private sense to persons connected with it.

**Guideline 3: The organization has no capital, capital stock or shareholders and earns no profits or dividends.** EDI was incorporated under the “General Not for Profit Corporation Act of Illinois” on April 12, 1990. Tr. pp. 371-172; Intervenor’s Ex. No. 8. EDI’s Bylaws, which Ms. Bibbs testified were in effect in 2004, do not contain a provision for the issuance of capital stock, shareholders or the payment of dividends. These Bylaws are undated. No Board of Directors resolution adopting these Bylaws was admitted into evidence. The Bylaws do not contain an “Article IX.” Rather, “Article VX” is positioned between “Article VIII” and “Article X.” The Bylaws end with “Article XIII.” Tr. pp. 489-490, Intervenor’s Ex. No. 7.

It must also be noted that the Bylaws discussed in the previous paragraph, which Ms. Bibbs testified were in effect in 2004, are different from the Bylaws submitted to the Department with EDI’s PTAX-300. EDI’s PTAX-300, signed and attested to by Lucy Bibbs on May 9, 2005, states in Part 4 that a copy of the applicant’s Bylaws are attached. Intervenor’s Ex. No. 46. At the evidentiary hearing, Ms. Bibbs testified that the Bylaws attached to the PTAX-300 were not and have never been the Bylaws of EDI. Ms. Bibbs was asked the following question: “Isn’t it true that [the Bylaws attached to the PTAX-300] were “just some notes an assistant of yours was trying to develop but they were never used by EDI?” She responded: “Yes.” Tr. pp. 173-179. If the Department relied on the Bylaws attached to the PTAX-300 in granting EDI an exemption for 45% of the subject property, this reliance was misplaced and unwarranted.

The Bylaws submitted to the Department with EDI's PTAX-300 contain provisions in "Article III" for "constituents." "The Constituents of the corporation is the person(s) that developed the corporation." "The Constituents of the corporation shall be the person(s) who makes at least ninety (90%) percent of the initial investment." "The Constituents shall have voting rights and all ruling power and authority over every officer and director of the corporation." "The Constituents of the corporation cannot be voted out of office by Officers or Directors." "The Constituents of the corporation shall hold their positions until death or until he/she resigns." These Bylaws, submitted with the PTAX-300, have fifteen consecutively numbered Articles.

It seems clear from the record in this case that Ms. Bibbs is the only person that can be considered a "constituent" of EDI. Ms. Bibbs testified, however, that EDI did not have constituent members. Tr. p. 194. EDI presented two different sets of Bylaws. The first set, submitted with EDI's PTAX-300, were not and never have been the Bylaws of EDI, according to Ms. Bibbs. The second set of Bylaws, caused to be admitted into evidence by the Intervenor and which Ms. Bibbs testified were in effect in 2004, are undated, have missing and incorrectly numbered Articles and contain no statement indicating that they were ever adopted by EDI's Board of Directors. The deficiencies in the evidence do not allow me to reach a conclusion as to whether EDI has capital, capital stock or shareholders.

In addition, because of the previous discussion as to the rental income earned by EDI from tenants at 380 Indianwood in Park Forest, the insurance proceeds for the destruction of one of EDI's schools, and EDI's rental of vans to Kiddy Kabby, all of which are omitted from EDI's Form 990's and its Comparative Income Statement, I am

unable to reach a conclusion that EDI does not earn a profit. EDI has failed to prove, by clear and convincing evidence, that it possesses the characteristic of a charitable organization that the organization has no capital, capital stock or shareholders and earns no profits or dividends.

**Guideline 4: The charity is dispensed to all who need and apply for it and the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government.** Tonya Fielding, Lucy Bibbs' daughter, testified that in 2004, "about 89 to 90 percent" of parents who enrolled their children at EDI received a waiver of some fees. She testified that registration fees were also waived. According to Ms. Fielding, some students received a total waiver of fees. Tr. pp. 290-292. No documentary evidence was admitted to support this testimony. Ms. Fielding also testified that Child Care Initiative ("CCI"), funded by the State of Illinois, reimbursed EDI less per child than what EDI's standard tuition was. Parents of children enrolled were then liable for the difference between the State funded amount and EDI's tuition. Ms. Fielding testified that "[S]ometimes parents can't afford [the co-payment]. So we have to waive it to make them feel comfortable so they can still get quality child care at a reasonable price." Tr. pp. 299-302. EDI's argument here appears to be that the unpaid co-payments constitute "charity."

Ms. Fielding also testified that 60 to 65 percent of EDI's enrollees were foster children, whose child care was completely paid for by the State of Illinois. According to her testimony, the State paid less than EDI's standard tuition for foster children and the State did not require foster parents to make a co-payment. Tr. pp. 303-305. EDI's argument with regard to foster care funding appears to be that the difference between

EDI's standard tuition and the State-paid amount constitutes "charity." No documentary evidence was offered to support these points.

Similar arguments have been made by hospitals with regard to the unreimbursed and uncollected costs of Medicaid and Medicare payments. Illinois courts have consistently rejected the argument that unreimbursed and uncollected costs of Medicare and Medicaid constitute charitable care. For example, in Riverside Medical Center v. Dept. of Revenue, 342 Ill. App. 3d 603 (3d Dist. 2003), Riverside argued, in a manner similar to EDI, that the Medical Center's charity care included "discounted care to patients through Medicare, Medicaid and private insurance." The court stated that it was unpersuaded by Riverside's arguments that the unreimbursed amounts constituted charitable care. The court was "confident that these discounts are not charitable and do not warrant a finding in favor of Riverside." *Id.* at 610.

EDI's arguments that the unreimbursed and uncollected costs of its child care program constitute charity are similarly "unpersuasive." EDI has apparently made a business decision to appeal to a market that receives State-paid child care. It may be that the appeal to this market guarantees full enrollment in EDI's child care centers. Lucy Bibbs testified that in 2004, 260 students were enrolled at the different EDI locations. Tr. p. 680. It may also be that the State-paid child care market is the only market that EDI can appeal to in its community. But the unreimbursed costs of its child care services, the amount that EDI chooses not to collect or is unable to collect through State funding, does not constitute charity.

EDI's Form 990's and Comparative Income Statement show that all of its revenue comes from payment for its child care services either by the State of Illinois or by the

parents of children enrolled. The fact that all of EDI's revenue comes from providing a paid-for service forces me to conclude that EDI's primary use of its property is not charitable, as 35 ILCS 200/15-65 requires. The primary use of EDI's property is the exchange of child care services for payment. This payment is made either by the State, co-pays from the parents whose children are subsidized by the State or by parents who pay the full fare. The revenue figures clearly indicate that EDI is operating a child care business, not a charity that provides child care. Counsel for EDI stated in his opening argument that Ms. Bibbs' daughters "worked for the business." "It was a family business." Tr. pp. 34-35. The record in this case forces me to conclude that counsel's characterization of EDI is accurate. EDI is operating a child care business, not a charity that provides child care.

No documentary evidence was admitted to show that EDI provides charity to an indefinite number of persons. As with so much of the documentary evidence discussed in this Recommendation, the evidence that EDI provided with regard to its rate structure and the tuition paid by students was misleading and inaccurate.

A fee schedule for "Exceptional Developmental Institute" for the period beginning in 2002 to September, 2004, shows fees for the following schools: Einstein Children's Academy ("ECA"), Innovative Child Care ("ICC"), Institute for Academic Development ("IAD") and Exceptional Development Institute. It is unclear from the testimony at the hearing what EDI's relationship was to ECA, ICC and IAD. If EDI had six child care locations in 2004, it is possible and likely that Lucy Bibbs actually owned and operated nine child care centers, with the addition of ECA, ICC and IAD.

The fee schedule for these schools shows weekly fees for infants (up to 2 ½ years old) were \$180 at each location. Weekly fees for children, 31 months to 12 years old, were \$145 at ECA and \$140 at the other locations. In addition to the weekly fees, there were fees for curriculum, registration, language materials, high reach program, and weekly readers. The registration fee was \$50 annually for each student. Other fees increased with the age of the child. The fee schedule also shows fees for “1/2 days,” and “drop-ins,” and “Transportation services for daycare students to & from home extra \$40.” The fee schedule does not contain a notation that fees or tuition could be waived. Tr. pp. 250-257; Intervenor’s Ex. No. 42.

A fee schedule for the period beginning in September, 2004, through September, 2006 shows fees for the following schools: Einstein Children’s Academy (“ECA”), Innovative Child Care (“ICC”), Institute for Academic Development (“IAD”) and Exceptional Development Institute. The fee schedule for these locations shows weekly fees for infants (up to 2 ½ years old) were \$190 at each location. Weekly fees for children, 2 to 3 years of age, were \$160 at each location. Weekly fees for children, 31 months to 12 years, were \$145 at each location. In addition to the weekly fees, there were fees for curriculum materials, registration, language materials, high reach program, and weekly readers. The registration fee was \$50 annually for each student. Other fees increased with the age of the child. The fee schedule also shows fees for “1/2 days,” and “drop-ins,” and “Transportation services for daycare students to & from home extra \$40.” The fee schedule does not have a notation that fees or tuition could be waived. Tr. pp. 258-257; Intervenor’s Ex. No. 43.

Lucy Bibbs submitted an “Affidavit of Specific Use,” with EDI’s PTAX-300. This Affidavit was attested to and signed by Lucy Bibbs on May 9, 2005. Paragraph 7 of the Affidavit states that “[T]he Institute charges a maximum rate per week of \$125.00.” This statement in Lucy Bibbs’ “Affidavit of Specific Use” contradicts the fee schedules detailed above where the minimum, not the maximum, weekly fee at EDI was \$140 for children, aged 31 months to 12 years. The maximum rate per week was \$190 for infants aged “zero to 2 ½ years,” in the 2004 to 2006 fee schedule. Tr. pp. 399-403; Intervenor’s Ex. No. 46. EDI’s maximum rate per week during this period was \$190, \$65 more than the \$125 “maximum” that Lucy Bibbs attested to in her Affidavit.

Paragraph 8 of the “Affidavit of Specific Use” states that EDI limits rate increases to 3 or 4 year intervals. This statement contradicts the fee schedules as detailed above, where the rates changed at two year intervals. Tr. pp. 463-464; Intervenor’s Ex. No. 46. If the Department relied on Paragraphs 7 and 8 of Lucy Bibbs’ Affidavit in granting EDI an exemption for 45% of the subject property, this reliance was misplaced and unwarranted.

The second part of the guideline at issue here requires an analysis of whether EDI’s services lessen the burdens of government. “The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them and a consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens.” School of Domestic Arts and Sciences v. Carr, 322 Ill. 562 (1926). I conclude that EDI’s operations do not reduce the burdens of government. EDI’s funding in the year at issue came from payments by the State of Illinois or by parents of children enrolled, in the form of co-pays or full payment,

for the child care services that EDI provides. As discussed above, the payments by the State of Illinois cannot be considered “public charity.” They are, in fact, payments by the State for the child care services rendered by EDI. The State of Illinois is paying EDI a fee for its services, not unlike other fee for service contracts executed pursuant to arms-length contractual agreements. EDI is not reducing a burden on the State of Illinois because the State is paying EDI for the child care services it provides. The contracts that EDI has with the State were not admitted into evidence at the hearing. I conclude that EDI has not proven, by clear and convincing evidence, that it possesses the characteristic of a charitable organization that its charity is dispensed to all who need and apply for it, that the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government.

**Guideline 5: The organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.** EDI places several obstacles in the way of those who need and would avail themselves of its benefits. Tonya Fielding testified that in 2004, EDI did not have a written policy as to when EDI would waive fees. Tr. pp. 248-249. Ms. Messex, EDI’s office worker, could not “remember” seeing any “written policy as to when EDI would or would not waive or reduce fees or tuition.” Tr. p. 672.

EDI’s Bylaws, which Lucy Bibbs testified were in effect in 2004 but which are different from the Bylaws submitted to the Department with EDI’s PTAX-300, do not contain a provision for the waiver or reduction of tuition or fees. Tr. pp. 489-490; Intervenor’s Ex. No. 7. The Bylaws state that EDI is organized exclusively for “charitable, educational, religious or scientific” purposes. Lucy Bibbs testified that “the

charitable part in this article, we consider that to be something that we would give or provide free to parents and their families, children.” Tr. pp. 489-490. Frankly, I am unable to conclude that a parent, in need of a waiver or reduction in tuition or fees from EDI, would know from the word “charitable” in EDI’s Bylaws (if, in fact, these were EDI’s Bylaws in 2004), that EDI would accommodate them with a waiver. Not having a written policy which specifically states that fees and tuition may be waived is an obstacle in the way of anyone who may have needed EDI’s child care services in 2004.

“Interrogatories,” propounded by the Intervenor in this case, requested in question 14 that EDI “[I]dentify any and all minutes of the board regarding the adoption or discussion of any policies to provide reduced tuition rates and/or waive tuition for qualifying students.” At the evidentiary hearing, Ms. Bibbs was asked to read EDI’s response to question 14. She stated: “I answered ‘none.’ ” Tr. p. 409. Lucy Bibbs then testified that the Board “may have” adopted policies. “Those kind of policies [were] adopted early in the – like in the 90’s.” Tr. pp. 406-409. No policies or Board resolutions, providing for reduced tuition rates or waivers, were admitted into evidence.

The “Interrogatories,” propounded by the Intervenor, requested in question 28 that EDI provide information as to whether students were expelled in 2004 because of unpaid tuition balances. “Also state whether there was any EDI policy addressing unpaid tuition.” At the evidentiary hearing, Ms. Bibbs was asked to read EDI’s response to Question 28 which was as follows: “...EDI states that a small number of its total students were expelled for failure to pay tuition during the year 2004.” Tr. p. 413. At the evidentiary hearing, Lucy Bibbs testified that she “wouldn’t know” whether students were expelled because she “didn’t handle the – payments as far as the accounting part

and the audit, the notices, or anything like that.” “That part of [EDI], I didn’t work with so much.” Tr. pp. 411-413. Lucy Bibbs signed the “Interrogatories” as Executive Director of EDI and attested that the Interrogatories were “true and correct and have been answered fully and correctly.” Tr. pp. 410-411.

In 2004, EDI sent 27 letters to parents stating that “[W]e are sorry to inform you that your child/children’s Daycare Funding and transportation has been cancelled for the following [checked] reasons:” “[Funding] not redetermined by DCFS; Funding canceled by DCFS; [Funding] not approved by DCFS; Non-Payment.” “Therefore, [child’s name] will be dropped from our Programs immediately.” “If you wish to have your child reinstated, you must contact your caseworker or our office.” There is no notation on any of the 27 letters sent to parents that EDI has a policy of waiving tuition or fees for families needing charitable assistance. Tr. pp. 449-450, 570-581, 663-665; Intervenor’s Ex. No. 73. Lucy Bibbs testified that in 2004, 260 students were enrolled at the different EDI locations. Tr. p. 680. If EDI “dropped” 27 of these students for nonpayment of tuition and fees, it dropped 10% of its enrollment.

The Intervenor in this case also caused to be admitted into evidence 91 pages of “Account Audits,” all dated in 2004, with some pages having up to 3 notices photocopied on the page, sent to parents of children enrolled in EDI showing amounts due and owing. Included with some “Account Audits” are “Official Drop Notices” advising parents that “[Y]our services have been dropped due to non-payment,” “effective immediately.” Intervenor’s Ex. No. 70. There is no notation on any of the 91 pages of “Account Audits” that EDI had a policy of waiving tuition or fees for families needing charitable assistance. Expelling 10% or a “small number” of children from EDI’s programs because

of unpaid tuition balances, whether the children were self-paid or DCFS funded, and advising parents of amounts due and owing without notifying these parents that fees and tuition may be waived by EDI are, at the risk of understatement, obstacles in the way of anyone needing charitable assistance.

It must be recognized here that charging fees and rendering benefits to persons not poverty-stricken does not destroy the charitable nature of an organization, but this is only true to the extent that the organization also admits people who need and seek the benefits offered but are unable to pay. Small v. Pangle, 60 Ill. 2d 510 (1975). No credible documentary evidence was admitted by EDI showing that the organization admits those seeking its benefits but are unable to pay.

EDI's Website in 2004 stated that "[T]he purpose of EDI Child Care Center is to offer superior child care developmental, program plan and staff." "The services will be adequate, affordable, accommodating and convenient for low income families as well as high income families." Page 6 of the Website states that "[W]e accept Self-Pay, DCFS-Foster Care, IDHS Funds, Public Aid and Child Care Initiatives." Tr. pp. 386-399; Intervenor's Ex. No. 20. Lucy Bibbs argued at the evidentiary hearing that this statement lets parents know that EDI allowed waivers and reductions in fees or tuition. Lucy Bibbs was then asked by counsel for the Intervenor whether "by stating that [EDI] accepts self-pay, DCFS, foster care, IDHS funds, public aid, and Child Care Initiatives, that that is some kind of code that [EDI] waives and reduces tuition and fees for parents." She responded "[Y]es." Tr. p. 396. Frankly, I am unable to conclude that anyone reading EDI's Website, which lists the different kinds of payment and funding that EDI accepts, would know that EDI would enroll a child and waive any or all payment. Listing

accepted payment and funding methods would not indicate to a parent who is unable to pay or get funding, that their child would be enrolled. The Website does not contain any specific notation that fees and tuition could be waived or reduced by EDI. This is an obstacle in the way of anyone who needs and would avail themselves of EDI's benefits.

Lucy Bibbs testified that the phrase "convenient for low income families" contained in the Website allows "low income people [to] know that they are welcome at our center." She testified that when the Website says "affordable," "it means if we have a price and the public doesn't know what the price is, they can assume that we are going to work with them on the price." "Accommodating" means "if you're not in the normal course of everything, it's okay where you can just get in." "We're going to work with you to improvise and accommodate you." "Convenient" means "we have resources or ways to work with the parents so that they can get to the center." Lucy Bibbs testified that if you are "aware of day care and the language that's used in day care," you would know from these statements on the Website that fees would be waived or reduced by EDI. Tr. pp. 391-393. Frankly, I am, again, unable to conclude that anyone reading this Website and the words "convenient, affordable and accommodating" would know that EDI would waive tuition or fees so that their child could attend EDI. It must also be noted here that the "convenience" mentioned in the Website is apparently provided by Kiddy Kabby, discussed above, which was started by Lucy Bibbs, and which leased vans from EDI at the rate of \$800/month, none of which is reflected in EDI's financial statements.

An advertisement, paid for by EDI, from the 2004 Ameritech "Yellow Pages" shows the following: "Innovative Child Care Corporation" (3 locations), EDI (6 locations), and Kiddy Kabby, "Children's Transportation Service," "Transportation for

individual children, day care centers and children's agencies." "Payments" in the advertisement are listed as "Self-pay, DCFS-Foster Care, IDHS Initiatives, Public-Aid, and Child Care Initiatives." The advertisement does not contain any notation that tuition or fees could be waived or reduced by EDI, Innovative Child Care or Kiddy Kabby. Tr. pp. 498-500, 699-704; Intervenor's Ex. No. 35. The fee schedule for the period beginning in 2002 to September, 2004, discussed above in this Recommendation, does not contain a notation that fees or tuition could be waived or reduced. Intervenor's Ex. No. 42. The fee schedule for the period beginning in September, 2004, through September, 2006, discussed above in this Recommendation, does not contain a notation that fees could be waived or reduced. Intervenor's Ex. No. 43.

In 2004, parents of children enrolled at EDI were required to sign a "Payment Agreement," attached to an enrollment form. The Payment Agreement contains the following statements, *inter alia*: "I am directly responsible for all debts incurred during my child(s) enrollment including registration fees, tuition, supplies and materials. I am directly responsible for payments for this child(s), even though payments are made by an agency or funding." "A non refundable registration fee of \$ \_\_\_ is due upon enrollment. One week tuition is due on the starting date and also their curriculum." "Payments that fall behind one (1) week and/or is excessively late, children will be dropped immediately from the program until payments are made in full." "Tuition is due each Monday of the Week. Tuition is considered late if paid after 10:00 A.M. on Tuesday and a \$ \_\_\_ late fee is due. If tuition is delinquent after one week, the child will be dropped from the program." "Full tuition is due when children are out of school for whatever reason. A re-enrollment fee is due if the child is out for three (3) weeks or more." The enrollment

form states that “[T]his agreement shall be terminated if any one or more parts are not honored or violated.” There is no notation on the “Payment Agreement” that EDI had a policy of waiving or reducing fees or tuition. Tr. pp. 266-272; Intervenor’s Ex. No. 55.

In 2004, parents who applied for government assistance for children enrolled at EDI signed a “Parent Monthly Co-Payment Agreement.” This Agreement contains the following provision: “I, \_\_\_\_\_, will be responsible for my child(ren) monthly co-payment and agree with the terms as outlined in this agreement. THE CO-PAYMENT IS DUE ON THE FIRST OF EACH MONTH. In the event my payment falls behind, I understand my child(ren) will be dropped from the program and I will still be responsible for any past due payments. A \$10.00 late fee will apply after the first.” Government assistance programs which provided funding to EDI included Child Care Initiative, Teen Parent, Office of Child Development (for foster children) and Woman’s Resource Assistance Program. There is no notation on the “Parent Monthly Co-Payment Agreement” that EDI had a policy of waiving or reducing tuition or fees. Tr. pp. 272-275, 300; Intervenor’s Ex. No. 40.

I concluded previously in this Recommendation, and I reiterate, that EDI was operating a child care business, not a charity providing child care in 2004. The above payment provisions contained in the “Payment Agreement” and the “Parent Monthly Co-Payment Agreement” are indicative of a business, not a charity. Threatening to “drop” children for nonpayment of fees, without advising parents that EDI has a policy for waiver and reduction of fees and tuition, is clearly an obstacle in the way of those needing charitable assistance. There may be sound business reasons for EDI to have such detailed payment and collection policies, including the threat to “drop” students for

nonpayment. However, publishing these rates and the policies used to collect these rates is “lacking in the warmth and spontaneity indicative of a charitable impulse” and appears to be “related to the bargaining of the commercial market place.” Korzen *supra* at 158. These Agreements, lacking any notation that fees or tuition would be waived by EDI, are an obstacle in the way of anyone who may need EDI’s services.

The graduation fee for EDI’s kindergarten, pre-school and junior honor graduates was \$80. Each graduate received two admission passes for the June 19, 2004 ceremony. Additional tickets were \$12/person. There is no notation on the notice to parents that the fee for the graduation could be waived or reduced. Tr. pp. 404-405, 555-558; Intervenor’s Ex. No. 62.

In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272, 281 (2d Dist. 1987), the court found that an Immediate Care Center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it.” In Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1<sup>st</sup> Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “Alivio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” If EDI did, in fact, provide charitable assistance in 2004, it was not being advertised in its Bylaws, Official Drop Notices sent to parents, Account Audits sent to parents, Website, Yellow Pages’ advertisement, Payment Agreement, Parent Monthly Co-Payment Agreement, or graduation fee notice.

The “Affidavit of Specific Use” submitted with EDI’s PTAX-300 states that “[T]he Institute maintains a low-income parent financial benefit policy by offering a reduction or waiver of tuition fees, registration fees and transportation fees. A copy of the written policy is attached as Exhibit C.” “Exhibit C” states that EDI “fulfills one of its charitable obligations by offering low-income families several financial benefits that would enable them to secure quality childcare. The following categories of financial requirements in appropriate circumstances may be reduced or waived.” Categories: “Tuition: a) Waive or Reduce Tuition; b) Accept state funding (lower than EDI rate) c) Waive co-payment; d) Late fees.” “Fees: a) Registration fees; b) Transportation; c) Curriculum Fee; d) Picture; e) Fieldtrips; f) Project Supplies.” “Families who are interested in financial benefits must provide proof of their income status.” “The Institute reserves the right, in its discretion, to determine and to what extent assistance may be made available.” Intervenor’s Ex. No. 46.

The problem with Exhibit C is that there was no testimony as to how any parent who wanted to enroll their child at EDI for child care, but was unable to pay, would know that the “financial benefit” policy even existed. The policy is not advertised in EDI’s Bylaws, Official Drop Notices sent to parents, Account Audits sent to parents, Website, Yellow Pages’ advertisement, Payment Agreement, Parent Monthly Co-Payment Agreement, or graduation fee notice. Furnishing a “financial benefit policy” to the Department, without providing clear and convincing evidence that parents are aware of the policy, does not provide a sufficient basis for me to conclude that EDI does not place obstacles in the way of those who need and would avail themselves of its benefits.

Furthermore, Lucy Bibbs testified that in 2004, only she was authorized to waive tuition or fees for students at EDI. Tr. pp. 464-466, 520-522, 694-695. Sonya Bibbs testified that Lucy Bibbs, alone, determined what fees would be waived, if any. Tr. pp. 634-635. So what EDI apparently had in 2004 was a “financial benefit policy,” sent to the Department with EDI’s PTAX-300, but which was not advertised to the public. Moreover, decisions on the “financial benefit policy” were made by one person, Lucy Bibbs, who was in complete control of the organization, with the benefits of the organization inuring to her and her family. It is difficult to see how Lucy Bibbs would have an incentive, under these circumstances, to grant any charitable assistance, if in fact any person needing assistance knew to ask for it. If the Department relied on this “financial benefit policy,” as contained in Exhibit C of the “Affidavit for Specific Use,” in exempting 45% of the subject property at issue in this case, the reliance was misplaced and unwarranted.

At the evidentiary hearing, Lucy Bibbs provided anecdotal testimony about families that had not paid full tuition in 2004. Tr. pp. 781-804. As she testified on this matter, she was looking at EDI’s ledger sheets for 2004. App. Ex. No. 8. These ledger sheets had been prepared by Ramona Messex, EDI’s office worker. After Lucy Bibbs’ testimony on this matter, the Intervenor and counsel for EDI submitted a “Stipulation of Testimony of Ramona Messex,” apparently in lieu of recalling Ms. Messex, who had testified previously at the hearing. The “Stipulation” states that: “From looking at the ledgers I prepared, you cannot know the reason why an amount was not paid by the parents in those months. It could have been a waiver of fees and tuition owed by parents, non-payment of fees and tuition by parents, the child may have already left EDI, a parent

may have subsequently made a double payment to make the missed payment, or other reasons.”

In light of the statements in Ms. Messex’ Stipulation, I am unable to give any weight to Lucy Bibbs’ anecdotal testimony that EDI waived or reduced fees in 2004 to any child or family listed on the ledger she was looking at. It is obvious from Ms. Messex’ Stipulation that the fact that full tuition and fees had not been paid for any student, did not necessarily indicate that a charitable contribution had been made by EDI. No listing of charitable contributions, by person or by amount, was offered into evidence by EDI. If EDI did give charitable assistance to some families in 2004, and the record in this case does not support a finding that EDI provided any charitable assistance, it must be noted that incidental acts of beneficence are legally insufficient to establish that an applicant is “exclusively” or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

EDI caused to be admitted into evidence an 8 1/2 x 11 inch sheet of paper that states “Charity Program Wants to Help You,” “Scholarships, Donations, Reduced Fees, Waived Fees, Discounted Tuition,” “Call [phone number].” According to Ms. Bibbs’ testimony, this Exhibit is a “a reduced size from a poster twice the size” that is posted in schools and other locations. According to Ms. Bibbs, this poster was in use in 2004. Tr. pp. 704-707; Applicant’s Ex. No. 5. Other than Ms. Bibbs’ testimony on this matter, I have no basis to conclude that the “poster” was hung in any school or other location in 2004. If Ms. Bibbs’ testimony on this issue is accurate, it must be balanced against the testimony of several witnesses that EDI did not have a written tuition waiver policy in 2004 and the numerous EDI documents admitted into evidence that have no notation that

fees or tuition could be waived or that EDI had a policy of waiving tuition or fees. Even if a parent were aware from the “poster” that financial assistance for child care was available from EDI, it is clear that there was no defined charitable policy because only Lucy Bibbs was authorized to approve financial assistance. Tr. pp. 464-466, 520-522, 694-695. As discussed previously, decisions on EDI’s “financial benefit policy,” if there was such a policy, were made by one person, Lucy Bibbs, who was in complete control of the organization, with the benefits of the organization inuring to her and her family. Thus there was no incentive at EDI to give financial assistance, if in fact, any parent knew to ask for it.

I conclude that EDI has not proven, by clear and convincing evidence, that it possesses the characteristic of a charitable organization that the organization not place obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses. In summary, I have concluded that EDI possesses none of the characteristics of a charitable organization as delineated in Korzen.<sup>5</sup>

**Guideline 6: Exclusive (primary) use of the property is for charitable purposes.** 35 ILCS 200/15-65 requires that property must be owned by a charitable organization and used for charitable purposes, in order to qualify for exemption. Because EDI possesses none of the characteristics of a charitable organization, as determined in this Recommendation, the property at issue in this case is not owned by a charitable organization and is, therefore, not entitled to exemption under the statute. Assuming,

---

<sup>5</sup> EDI moved for a directed verdict at the end of the Intervenor’s case, arguing, *inter alia*, that all that the Intervenor had shown is “some tax returns which Ms. Bibbs took to their accountants to prepare [that] may have errors in them.” “But there has been clear testimony from EDI and other witnesses that EDI does provide charitable services and the types of charitable services that they do provide.” Tr. pp. 649-650. I deferred ruling on EDI’s motion so that EDI’s arguments could be addressed in this Recommendation. Tr. p. 653. EDI’s motion for a directed verdict is hereby denied.

*arguendo*, that the subject property was owned by a charitable organization, I conclude, additionally, that the property was not used for charitable purposes in 2004.

The “Affidavit of Specific Use,” signed and attested to by Lucy Bibbs on May 9, 2005, submitted with EDI’s PTAX-300, states at Paragraph 17 that “[T]he Institute has caused to be filed an occupancy permit with the Village of Park Forest, Illinois.” Intervenor’s Ex. No. 46. This statement is inaccurate. If the Department relied on Paragraph 17 in granting EDI an exemption for 45% of the subject property, this reliance was misplaced and unwarranted.

Mr. Kerestes, Director of Community Development for the Village of Park Forest, testified that based on his exterior inspections of the subject property, the property did not meet Village code requirements for occupancy. He testified that the Village of Park Forest had never issued a certificate of occupancy for use and the Village has never received a request for inspection of the property by EDI. Tr. p. 53. Mr. Kerestes testified that there were no applications for building permits and no applications for occupancy permits in the Village’s files for the subject property. There was nothing in the Village’s files to indicate that any “architect or building contractor or anyone from EDI or acting on EDI’s behalf ever approached the Village about renovating or reopening” the subject property. Tr. p. 64. When asked by Intervenor’s counsel if her statement in paragraph 17 of the Affidavit that EDI had caused to be filed an occupancy permit was a true statement, Lucy Bibbs responded “[D]o I have to give a yes or a no?” After more exasperating responses on this issue from Ms. Bibbs, Intervenor’s counsel finally asked the following question: “So EDI has not applied for an occupancy permit with the Village of Park Forest; is that correct?” Ms. Bibbs responded: “That’s correct.” Tr. pp. 469-470.

Tr. pp. 469-470; Intervenor's Ex. No. 46. No occupancy permit was offered into evidence.

The "Affidavit of Specific Use," signed and attested to by Lucy Bibbs on May 9, 2005, submitted with EDI's PTAX-300 states at Paragraph 16 that "[t]he Institute has installed administrative offices and classrooms for immediate occupancy and use" on the subject property. Intervenor's Ex. No. 46. This statement is also inaccurate. If the Department relied on this statement in exempting 45% of the subject property in 2004, this reliance was misplaced and unwarranted. Ms. Bibbs testified at the evidentiary hearing that "there's never been classrooms" on the subject property Tr. p. 467. She maintained, however, that there were administrative offices on the subject property in 2004. Tr. p. 468. I am unable to conclude from the record in this case that there were administrative offices on the subject property in 2004.

Mr. Kerestes testified that he viewed the exterior of the subject property on a weekly basis in 2004. He observed "broken boarded windows, broken windows and doors where doors had been secured improperly with bars across them." "We were aware of roof conditions and leakage into the property, the fascia, the general upkeep of the landscaping on the property. The parking lot in disrepair." Tr. p. 52. Mr. Kerestes testified that EDI was billed \$12.42 for water and garbage pickup for each month in the year 2004. He testified that \$12.42 was a "base use fee" to have water and garbage services. "It does not identify any water being used at this property." According to his testimony, the Village charges property owners for water. If water was actually being used on the subject property, the bill would be more than \$12.42/month. Tr. pp. 74-75; Intervenor's Ex. No. 61.

Robert Fielding, Tonya Fielding's husband and Lucy Bibbs' son-in law, was employed to do maintenance work for EDI. Tr. p. 758. He testified that in 2004, he would check the subject property once or twice a week. "I put storage there, took storage out as needed." He testified that the "majority" of the rooms on the subject property were used for storage in 2004. Tr. p. 761. Mr. Fielding did not recall if he did any renovation or remodeling work at the subject property in 2004. Tr. p. 766. Mr. Fielding did not recall if there was a facsimile machine on the subject property in 2004. Tr. p. 767. Mr. Fielding did not recall if there was a copy machine on the subject property in 2004. Tr. p. 769. Mr. Fielding did not "remember" if there were computers on the subject property in 2004. Tr. p. 772.

Mr. Fielding did remember that there was no telephone in the subject property in 2004. Tr. p. 773. Mr. Fielding also remembered that there was no gas being used at the subject property in 2004. Tr. p. 774. Mr. Fielding testified that there was an inventory list of what was stored on the subject property in 2004. Tr. p. 774. No inventory list was offered into evidence by EDI.

An "exclusively" charitable use need not be interpreted literally as the entity's sole purpose; it should be interpreted to mean the primary use, but not a merely incidental use or secondary use. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). The record in this case does not permit me to reach the conclusion that the 45% of the subject property at issue in these proceedings was exclusively used for charitable purposes in 2004. Assuming, for the sake of argument, that I could reach the conclusion that the property was exclusively used for charitable purposes in 2004, I

would be unable to fashion or recommend an exemption for the “majority” of the rooms that were used, according to Mr. Fielding’s testimony.

Finally, I conclude that the testimony of Lucy Bibbs and family members on many issues pertinent to the exemption of the subject property was not credible. EDI’s Form 990’s, Comparative Income Statements, Affidavit of Specific Use, and other documents submitted to the Department with EDI’s PTAX-300, were inaccurate, to say the least. For these reasons, it is recommended that the Department’s determination which granted EDI a 45% exemption of the subject property should be reversed and Cook County Parcel Index Number 31-25-103-065-0000, should not be exempt from 2004 real estate taxes.

ENTER:

Kenneth J. Galvin

November 19, 2008