

OAL DKT. NO. EDU 3573-06  
AGENCY DKT. NO. 39-1/06

YOUTH CONSULTATION SERVICE, INC. :  
(FORT LEE EDUCATION CENTER), :

PETITIONER, :

V. :

NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, OFFICE OF FISCAL :  
POLICY AND PLANNING, :

RESPONDENT. :

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OAL DKT. NO. EDU 3574-06  
AGENCY DKT. NO. 40-1/06

YOUTH CONSULTATION SERVICE, INC. :  
(SAWTELLE LEARNING CENTER, PARAMUS), :

PETITIONER, :

V. :

NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, OFFICE OF FISCAL :  
POLICY AND PLANNING, :

RESPONDENT. :

COMMISSIONER OF EDUCATION  
DECISION

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OAL DKT. NO. EDU 3575-06  
AGENCY DKT. NO. 41-1/06

YOUTH CONSULTATION SERVICE, INC. :  
(SAWTELLE LEARNING CENTER, FAIRLAWN), :

PETITIONER, :

V. :

NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, OFFICE OF FISCAL :  
POLICY AND PLANNING, :

RESPONDENT. :

OAL DKT. NO. EDU 3576-06  
AGENCY DKT. NO. 49-1/06

YOUTH CONSULTATION SERVICE, INC. :  
(ERNEST MAY ACADEMY), :

PETITIONER, :  
V. :

NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, OFFICE OF FISCAL :  
POLICY AND PLANNING, :

RESPONDENT. :

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OAL DKT. NO. EDU 3577-06  
AGENCY DKT. NO. 50-1/06

YOUTH CONSULTATION SERVICE, INC. :  
(SAWTELLE LEARNING CENTER, MONTCLAIR), :

PETITIONER, :  
V. :

NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, OFFICE OF FISCAL :  
POLICY AND PLANNING, :

RESPONDENT. :

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OAL DKT. NO. EDU 3684-06  
AGENCY DKT. NO. 55-1/06

YOUTH CONSULTATION SERVICE, INC. :  
(KEARNY SAWTELLE LEARNING CENTER), :

PETITIONER, :  
V. :

NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, OFFICE OF FISCAL :  
POLICY AND PLANNING, :

RESPONDENT. :

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OAL DKT. NO. EDU 3685-06  
AGENCY DKT. NO. 56-1/06

YOUTH CONSULTATION SERVICE, INC. :  
(RIDGWOOD SAWTELLE LEARNING CENTER), :

PETITIONER, :  
V. :

NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, OFFICE OF FISCAL :  
POLICY AND PLANNING, :

RESPONDENT. :

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OAL DKT. NO. EDU 3686-06  
AGENCY DKT. NO. 54-1/06

YOUTH CONSULTATION SERVICE, INC. :  
(GEORGE WASHINGTON SCHOOL), :

PETITIONER, :  
V. :

NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, OFFICE OF FISCAL :  
POLICY AND PLANNING, :

RESPONDENT. :

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SYNOPSIS

Petitioning private schools for children with disabilities appealed the Department's determination to disallow the consideration of salaries and associated costs of certain employees of Youth Consultation Services, Inc. (YCS) in setting the tuition rates that sending public school districts would pay to YCS schools during the 2003-2004 fiscal year. The Department specifically disallowed certain salaries for unrecognized positions or for uncertified employees functioning in a position requiring certification. YCS contended that the Department mischaracterized these positions by misconstruing the actual duties performed by the employees.

The ALJ found, *inter alia*, that salaries and related benefits of certain YCS employees should be disallowed or limited where uncertified individuals were serving in positions requiring certification; where employees were improperly functioning in unrecognized position titles without Department approval; and where the salary of an individual functioning in an administrative position which does not require certification was in excess of the lowest maximum allowable salary in the county where the school is located. The ALJ determined that the salaries of designated employees in the following positions were allowable expenses in 2003-2004: Executive Director, Assistant Director or Business Manager, Teacher of the Handicapped, Speech Language Specialist, and School Social Worker;

he further determined that the salaries of designated employees in the following positions are disallowed for the 2003-2004 school year: Mental Health Clinicians, Training Coordinator, Director of Speech, Speech Therapists, and Substitute Floater Registered Nurse. The ALJ further determined that designated individuals in the title of Assistant Business Administrator be treated for 2003-2004 as in unrecognized positions, the maximum salaries for which cannot be in excess of the lowest maximum allowable salary under *N.J.A.C. 6A:23-4.5(a) 9*.

Upon a thorough and independent review of the record, the Commissioner determined to adopt the Initial Decision as the final decision, with one modification: that the salaries and associated benefits of two Speech Language Therapists should not be fully disallowed, since the Department conceded that the individuals in question were properly certified for a good portion of the 2003-2004 school year.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>
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October 4, 2007

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DECISION

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Youth Consultation Service, Inc.'s (YCS) primary exceptions and the Department of Education's (Department) primary and reply exceptions – filed in accordance with the provisions of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching her determination.

The parties' exceptions essentially recast and reiterate their arguments advanced below, which the Commissioner finds were considered and addressed in the Initial Decision and, therefore, will not be revisited here.

Upon full review and consideration of the record – which, it is noted, did not contain transcripts of the hearing conducted below<sup>1</sup> – and exercising the requisite deference to the ALJ’s assessment of the credibility of the witnesses,<sup>2</sup> the Commissioner determines to adopt the recommended Initial Decision, with one modification detailed below.

YCS’s exceptions charge, and the Department’s reply exceptions concede, that Speech Language Specialists – Marie Vertleyb and Andreas Zelanakas – were properly certified for a good portion of the 2003-04 school year and, thus, their entire salaries and associated fringe benefits should not be fully disallowed. The parties’ submissions agree that Ms. Vertleyb was properly certificated from September 1, 2003 through July 31, 2004, and Ms. Zelanakas was properly certificated December 1, 2003 through July 31, 2004. As such, only salary and associated fringe benefits from July 1, 2003 through August 31, 2003, and July 1, 2003 through November 30, 2003, respectively, for these individuals are considered non-allowable costs in accordance with *N.J.A.C. 6A:23-4.5(a) 6 and 10*.

Accordingly, the Initial Decision of the OAL, as modified above, is adopted for the reasons clearly articulated therein and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 4, 2007

Date of Mailing: October 4, 2007

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<sup>1</sup> It is noted that parties challenging an ALJ’s findings of fact based on alleged hearing testimony are required to provide the Commissioner with the relevant portions of the official transcript. *In re Morrison*, 216 *N.J. Super.* 143, 158 (App. Div. 1987)

<sup>2</sup> The applicable standard of review in this regard is clear and unequivocal – the Commissioner “may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record.” (*N.J.S.A. 52:14B-10(c)*) A reasoned review of the record, with this governing standard in mind, provides no basis for concluding that the ALJ’s credibility assessments and resultant fact finding were without the requisite level of support.

<sup>3</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*