

MIDDLESEX COUNTY EDUCATIONAL SERVICES COMMISSION, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY STATE DEPARTMENT OF EDUCATION, : DECISION
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioning Educational Services Commission sought recalculation by the Office of Compliance of the sum determined to be due to the respondent Department of Education pursuant to audit.

ALJ found that the Commission must refund \$49,035.66 because that amount was fraudulently charged to State and Federal sources by a Commission employee and the Commission had no legal basis for retaining any of these funds. ALJ determined that there was no legal precedent that would require the Department to accept a *pro rata* payment and that the controlling statute, *N.J.S.A. 18A:46A-14*, provides that if an expenditure incurred by any district is less than the amount of State aid received, the district shall refund the unexpended State aid after the completion of the school year. Moreover, an educational services commission may not be a profit-making entity.

Commissioner concurred with the findings and conclusions of the ALJ. Commissioner granted summary judgment to respondent and directed petitioner to refund respondent the sum of \$49,035.66.

FEBRUARY 5, 1999

OAL DKT. NO. EDU 6566-98
AGENCY DKT. NO. 188-6/98

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions.

Upon careful and independent review, the Commissioner concurs with the findings and conclusions of the ALJ. Accordingly, the initial decision is adopted for the reasons expressed therein. Summary Judgment is hereby granted to respondent, and petitioner is directed to refund respondent the sum of \$49,035.66. *

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

FEBRUARY 5, 1999

* This decision, as the Commissioner's final determination in the instant matter, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.