

92-03

CATHOLIC FAMILY AND COMMUNITY SERVICES <i>ET AL.</i> ,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
NEW JERSEY STATE DEPARTMENT OF EDUCATION, OFFICE OF COMPLIANCE,	:	DECISION
	:	
RESPONDENT.	:	
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SYNOPSIS

Petitioners, Catholic Family and Community Services and Mount St. Joseph Children's Center which operate a daytime program and a full-time resident program for handicapped children, challenged the Department's audit for 1993-94 that determined petitioners had included non-allowable costs in the calculation of the per pupil tuition charge. Following an order granting partial summary decision with respect to the issue of rental charges, the only issues remaining were related to the disallowance of salary for uncertified staff, the allocation of occupancy expenses, as well as the allocation of food expenses.

The ALJ found that petitioners did not demonstrate that the Department's determinations were not reasonable by a preponderance of the evidence. The ALJ found that regulations disallowed the salary of the professional staff member. The ALJ also found that the Department made its determinations concerning the food and occupancy expenses based on the documentation it had before it. Thus, petitioners did not sustain the burden of proof that the Department acted improperly.

The Commissioner concurred with the ALJ that petitioners failed to sustain their burden of establishing that the audit disallowances were arbitrary, capricious or unreasonable. The Commissioner upheld said disallowances. The petition was dismissed.

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.
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March 3, 2003

Note: Typographical error in first line of synopsis corrected for publication.

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners' exceptions¹ and respondent's reply thereto were filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4, and were fully considered by the Commissioner in reaching his determination herein.

Petitioners' exceptions essentially recast and reiterate their arguments advanced below. Additionally, petitioners charge that in reaching her conclusions here the Administrative Law Judge (ALJ) failed to give sufficient credence to the un rebutted evidence and the testimony of the witnesses, Dr. Novembre and Mr. Jacob, presented on each of the disallowances which formed the basis of this appeal.

¹ Petitioners' exceptions purport to include a copy of "transcripts" of the September 18, 2002 hearing conducted at the OAL. Such submission appears to be a privately procured transcription of "unofficial" hearing tapes. The Commissioner notes that *N.J.A.C.* 1:1-14.11 specifies the mechanism for bringing transcripts to the record. Further, *N.J.A.C.* 1:1-14.11(h)1 directs that all transcripts be prepared in accordance with state standards established by the Administrative Director of the Courts. Petitioners' submission does not even approximate conformance with such standards, lacking, among other things, a Title page, an Index page, and Line numbers. Moreover, even assuming, *arguendo*, that petitioners' "transcripts" were in compliance with the applicable rule, they were so poorly produced that any assistive value they might otherwise have had in this matter was greatly reduced.

Upon a thorough and independent review of the full record, and finding nothing in petitioners' exceptions which would compel a contrary result, the Commissioner agrees with the ALJ's findings and conclusion that each of the audit disallowances at issue in this matter must be sustained. Initially, he agrees with the ALJ, for the reasons outlined in her May 24, 2002 partial summary decision order, (appended to this decision as pages 13a through 13j), that petitioners and the Diocese of Paterson ("Diocese") are "related parties," within the intendment of *N.J.A.C. 6:20-4.4(a)45*,² and, therefore, respondent's disallowance of \$31,000 for petitioners' rental of facilities from the Diocese during the relevant audit period was proper. The Commissioner further concurs, for the reasons detailed in the ALJ's January 14, 2003 Initial Decision, that petitioners failed to sustain their burden of establishing that any of the remaining disallowances of the respondent, which formed the basis of this appeal, *i.e.*, food service expenses, occupancy expenses, and payment to Jacqueline L. Edelstein, was arbitrary, capricious or unreasonable and such disallowances must, therefore, be upheld.

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

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: March 3, 2003

Date of Mailing: March 3, 2003

² Recodified as *N.J.A.C. 6A:23-4.5(a)47* without substantive amendment May 7, 2001.

³ This decision, as the Commissioner's final determination, 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.*