

#256-06

OAL DKT. NO. EDU 3361-04 ([http://lawlibrary.rutgers.edu/oal/html/initial/edu03361-04\\_1.html](http://lawlibrary.rutgers.edu/oal/html/initial/edu03361-04_1.html))  
AGENCY DKT. NO. 23-1/04

YOUTH CONSULTATION SERVICE, INC. :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
NEW JERSEY STATE DEPARTMENT OF :  
EDUCATION, OFFICE OF COMPLIANCE :  
INVESTIGATION, :  
RESPONDENT. :  
\_\_\_\_\_ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the parties' arguments on exception.<sup>1</sup>

In its submission, petitioner Youth Consultation Service, Inc. (YCS) seeks partial rejection of the Initial Decision, reiterating its prior argument that the regulations at issue do not apply to YCS's President/CEO (Mr. Mingoia).<sup>2</sup> YCS contends once again that the Department of Education (Department) had no basis in law upon which to demand that Mr. Mingoia's salary be limited or that its allocation among constituent entities begin with the maximum salary for a director at any one school, and it urges adoption of the ALJ's finding that the Department's disallowance was improperly based upon a "time allocation" regulation not in effect during the period at issue. YCS also renews its claim that the Department's methodology violated its own regulation because the "maximum salary calculated" pursuant to *N.J.A.C. 6A:23-4.2(p)* would be less than the President's (Mr. Mingoia's) corresponding salary in the prior year. (YCS's Cross-Exceptions at 1-13)

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<sup>1</sup> The Department of Education submitted primary exceptions and a reply to YCS's cross-exceptions; YCS submitted cross-exceptions incorporating replies to the Department's exceptions.

<sup>2</sup> These are sufficiently summarized by the ALJ at 9-11 and are not repeated here.

The Department, on the other hand, endorses the ALJ's conclusion regarding the applicability of excess salary rules to Mr. Mingoia, but urges rejection of her conclusion that the Department engaged in unauthorized rulemaking in its actual calculation of Mr. Mingoia's allocated allowable salary for tuition rate purposes. The Department argues that the formula rejected by the ALJ as a retroactive application of later rules was not, in fact, relied upon by the Department in making the calculation at issue; rather, the basis for the Department's calculation rested on *N.J.A.C. 6A:23-4.2(f)2i* in conjunction with *N.J.A.C. 6A:23-4.5(a)8*, both as they existed in 2001-02. (Department's Exceptions at 1-5; Reply Exceptions at 1-7)

Upon review and consideration, the Commissioner adopts in part, and rejects in part, the Initial Decision.

Initially, the Commissioner fully concurs with the ALJ, for the reasons expressed in the Initial Decision, that regulations establishing a maximum allowable salary for purposes of the tuition rate chargeable to public school districts apply to the President/CEO of YCS, which the Department properly analogized to a Chief School Administrator/Executive Director/Director in setting the allowable salary for the position pursuant to *N.J.A.C. 6A:23-4.2(p)*. As did the ALJ, the Commissioner notes that the Department's action places no limit on the actual salary YCS pays to Mr. Mingoia for his various duties, only on the portion of it that can be charged to public school districts for his services to YCS's private schools for the disabled; neither does it dictate or limit the manner in which YCS may charge Mr. Mingoia's salary to programs not regulated by the Department.

Having concurred with the ALJ that agency rules disallowing excess salary are applicable to Mr. Mingoia, however, the Commissioner cannot similarly agree that the Department's actual calculation of Mr. Mingoia's salary for purposes of YCS-Sawtelle Learning Center South's (YCS South) public school district tuition rate was improper, nor that it constituted a retroactive application of rule. To the contrary, what the record demonstrates is

that the Department arrived at its calculation through a reasonable application of then-existing rules – including the very rules found applicable by the ALJ – in no way relying on *N.J.A.C. 6A:23-4.5(a)8* as it was subsequently amended or engaging in impermissible *ad hoc* rulemaking.

The audit documents underlying this matter show that the Department limited the chargeable amount of Mr. Mingoia’s overall salary in accordance with *N.J.A.C. 6A:23-4.5(a)8*, recognizing that, to the extent Mingoia’s services were attributable to YCS’s private schools for the disabled, his position was analogous to that of a Chief School Administrator/Executive Director/Director and the maximum allowable salary established pursuant to *N.J.A.C. 6A:23-4.2(p)* must be applied in determining YCS’s public school tuition rate. The properly limited salary amount was then allocated to YCS’s allowable indirect cost center pursuant to *N.J.A.C. 6A:23-4.2(f)2i*, and, because Mr. Mingoia’s chargeable services were not devoted exclusively to one school, the portion attributable to YCS South was prorated as required by *N.J.A.C. 6A:23-4.5(a)8*; such proration was accomplished by applying to YCS’s total allowable general and administrative costs the allocation percentage (3.17%) derived from the ratio of YCS South’s direct costs to YCS’s total direct costs, consistent with *N.J.A.C. 6A:23-4.2(f)3i*. See Exhibits A and C, included with the Hearing Brief and Exhibits on Behalf of Petitioner and also as unnumbered attachments to the parties’ Joint Stipulation of Facts. The Commissioner finds no evidence here of impermissible rulemaking, error or arbitrariness; indeed, the Department’s calculation reflects sound educational and fiscal policy as well as consistency with then-applicable rule.<sup>3</sup>

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<sup>3</sup> Although YCS states that the Department cannot disavow its reliance on the “time allocation” method after having admitted its use through briefs and testimony (YCS’s Cross-Exceptions at 10-11), this “admission” is questionable for a number of reasons: First, the term does not appear until the Chief of Staff’s letter of October 21, 2003 (Exhibit E), and then in a generic usage not linked to any specific formula, let alone to the highly prescribed method of *N.J.A.C. 6A:23-4.5(a)8* as amended. Second, the context of any purported “confirmation” at hearing cannot be examined in the absence of transcripts, which were not provided to the

Finally, YCS's contention that the Department's action violates *N.J.A.C. 6A:23-4.2(p)* – because the maximum allowable salary applied to Mr. Mingoia is less than his corresponding salary in the prior year – reflects a misunderstanding of the cited rule. The “no reduction” provision referenced by YCS refers on its face to the benchmark maximum salaries calculated by the Commissioner for purposes of measuring excessiveness, not to the comparative effect of the benchmark's application in any given situation. The Commissioner finds no evidence on record, nor, indeed, does YCS appear to be claiming, that the Department's maximum allowable salary calculation for the job title and year in question was less than the corresponding salary calculation in the prior year.

Accordingly, to the extent that it upholds the Department's action, the Initial Decision of the OAL is adopted for the reasons expressed therein; to the extent that it does not, the decision is rejected for the reasons set forth above and the Petition of Appeal is dismissed in its entirety.

IT IS SO ORDERED.<sup>4</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 26, 2006

Date of Mailing: July 26, 2006

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Commissioner. *In re Morrison*, 216 *N.J. Super.* 143 (App. Div. 1987). Finally and most compellingly, YCS's claim of *ad hoc* or retroactive application of a new “time allocation” methodology is belied by the actual audit report at issue (Exhibit A), which evidences no use of such method and whose disallowance calculations are readily attributable to existing rules.

<sup>4</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.*