

#114-11R (OAL Decision: Not yet available online)

ARCHWAY PROGRAMS, INC. :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT : PARTIAL DECISION ON REMAND
OF EDUCATION, :
RESPONDENT. :
_____ :

SYNOPSIS

The controversy herein involves five audits conducted by the respondent Department on Archway's accounts for the school years from 1994-1995 through 1998-1999, in which the Department disallowed approximately \$9 million in non-allowable costs and expenses and ordered these tuition overcharges returned to the sending districts. Archway appealed this conclusion.

The Office of Administrative Law (OAL) has to date issued three Initial Decisions in this case. In September 2008, the ALJ made recommendations regarding resolution of legal issues in connection with the five audits, but sent the case back to the Commissioner for computation and presentation of final calculations as to the disallowances; the Commissioner adopted the ALJ's recommendations regarding resolution of legal issues, but remanded the case back to the OAL with a directive for the ALJ to make the necessary calculations. On remand, the ALJ determined that it was appropriate to initially resolve only the first audit year as it will have a carryover effect on the remaining audits, and issued a Partial Initial Decision ordering Archway to reimburse the sending districts the amount of their overpayments for the 1994-1995 school year. The Commissioner adopted the decision, ordered Archway to return a total of \$2,315,855.51 to the sending districts, and returned the matter to the OAL in order to make the requisite calculations and recommended determination of monies due and owing for the remaining audit years. Archway appealed this decision to the Appellate Division of the Superior Court, which determined that, as all claims as to all parties in this consolidated action had yet to be resolved, Archway's appeal as a final agency determination was premature. In February 2011, the ALJ issued a second Partial Initial Decision, which addresses the amount of monies due and owing by Archway for the 1995-1996, 1996-1997 and 1997-1998 school years, but leaves unresolved the amount due and owing for the 1998-1999 school year.

Upon a thorough and independent review of the record, the Commissioner found that review of the instant Partial Initial Decision – which resolves final calculations for only three of the four remaining audit years – would be nonproductive at this point in time. The Commissioner instead determined to reserve review of this Partial Initial Decision until after the OAL has concluded the fifth and final audit year. The Commissioner therefore returned the matter to the OAL for resolution of the issues surrounding the 1998-1999 audit year and issuance of a final Initial Decision in this matter; he further requested that the ALJ's final Initial Decision present the calculated monetary figure due and owing by Archway for each of the five audit years at issue.

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| 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 18, 2011

OAL DKT. NO. EDU 10474-08
(OAL DKT. NOS. EDU 6956-00, EDU 8646-00, EDU 4834-01, AND EDU 4607-03,
(ON REMAND)
AGENCY DKT. NOS. 271-7/00, 381-10/00, 227-8/99, AND 392-12/02
(CONSOLIDATED)

ARCHWAY PROGRAMS, INC. :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT : PARTIAL DECISION ON REMAND
OF EDUCATION, :
RESPONDENT. :
_____ :

The petitioner, Archway Programs (Archway) is a non-profit corporation which operates a private school for the handicapped (PSH) authorized to educate handicapped public school students pursuant to *N.J.S.A.* 18A:46-14(g), and receives tuition from sending districts commensurate with its actual cost per pupil as determined by a certified audit. Pursuant to governing regulations, certain specified items may not be included in the computation of a tuition rate chargeable to the sending districts. The controversy herein involves five audits conducted by the respondent Department of Education (DOE) on Archway's accounts for the school years from 1994-1995 through 1998-1999, in which the DOE disallowed approximately \$9 million in non-allowable costs and expenses and ordered these tuition overcharges returned to the sending districts. Archway appealed this conclusion. In September 2008, the Administrative Law Judge (ALJ) issued an Initial Decision recommending resolution of legal issues concerning methodologies and allowable costs in connection with the five contested audits, and further recommended that the Commissioner calculate and present final mathematical calculations as to disallowances based upon these resolutions. In a final decision dated

December 5, 2008, the Commissioner adopted the ALJ's recommendations regarding resolution of legal issues, but rejected the proposal regarding computation and presentation of final mathematical calculations. The Commissioner remanded the matter to the Office of Administrative Law (OAL) for such further proceedings as were necessary to allow the ALJ to conclude these consolidated cases by making the requisite calculations and recommended determination of monies due and owing.

On remand, the ALJ found that it was appropriate to initially resolve only the audit for the 1994-1995 school year – and to reserve recommendation on the remaining years – as resolution of this particular audit will have a carryover effect on the remaining later audits, and ordered that the DOE prepare a new audit of the 1994-1995 school year. Based on that audit, and the fact that Archway indicated no objections to the mathematical calculations contained therein, the ALJ determined that the revised DOE audit dated June 25, 2010 includes the amount that petitioner is obligated to return to the sending districts, and she issued a Partial Initial Decision ordering Archway to reimburse these districts the amount of their overpayments for the 1994-1995 school year.

By decision dated October 28, 2010 (Commissioner Decision #453-10R), the Commissioner adopted the Partial Initial Decision of the OAL as the final decision as to the 1994-1995 school year, and ordered Archway to return – within 60 days of this decision – a total of \$2,315,855.51 to the districts which sent students to its PSH during the 1994-1995 school year. The matter was returned to the OAL for further action deemed necessary by the ALJ in order to make the requisite calculations and recommended determination of monies due and owing for the remaining audit years. Archway appealed this decision to the Appellate Division of the Superior Court, which determined that, as all claims as to all parties in this consolidated

action had yet to be resolved below, Archway's appeal as a final agency determination was premature.

On February 10, 2011 the Agency received the attached second Partial Initial Decision from the OAL which purports to resolve the amounts of monies due and owing by Archway for the 1995-96, 1996-97 and 1997-98 school years, leaving yet unresolved monies due and owing for the 1998-99 school year. Exceptions and reply exceptions to this decision were duly filed by Archway and the Department, respectively.

Upon review – pursuant to the authority granted him under *N.J.A.C. 1:1-12.5(e)* – the Commissioner declines to review the instant Partial Initial Decision of the OAL as he finds and determines that immediate review of this decision – which resolves final calculations for only three of the four remaining audit years – at this point in time will not serve to avoid unnecessary litigation or expense. The Commissioner, therefore, is returning this matter to the OAL for resolution of the issues surrounding the last remaining audit year in this contested case and for issuance of a final Initial Decision in this consolidated matter. The instant Partial Initial Decision will then be reviewed at the end of the contested case. Additionally, it is hereby requested that the ALJ's final Initial Decision in this matter clearly present the exact calculated monetary figure due and owing by Archway for each of the five audit years at issue.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 18, 2011

Date of Mailing: March 18, 2011

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).