

## New Jersey Commissioner of Education

### Final Decision

The Children’s Center of Monmouth  
County, Inc.,

Petitioner,

v.

New Jersey Department of Education, Office of School  
Finance,

Respondent.

### Synopsis

Petitioner, The Children’s Center of Monmouth County (CCMC) – a private school for students with disabilities – appealed the determination of the respondent, the New Jersey Department of Education’s Office of School Funding (NJDOE; OSF), to classify a portion of an employee’s salary for the 2012-2013 and 2013-2014 school years as a “non-allowable expenditure”. CCMC also appealed OSF’s determination that the write-off of certain uncollected accounts receivable is a “non-allowable expenditure”. The parties filed cross motions for summary decision. The cross motion of the respondent OSF on the issue of write-offs was granted in July 2018, finding that the costs were not allowable as a matter of law. A hearing on the issue of the employee’s salary was conducted in April 2019, and the ALJ’s Initial Decision was issued on August 12, 2019.

The ALJ found, *inter alia*, that: private schools for children with disabilities are governed by *N.J.S.A.* 18A:46-2, which authorizes the NJDOE to promulgate regulations governing the tuition rates that approved private schools for students with disabilities (APSSD) may charge local public school districts; OSR reviews audited financial statements of APSSDs to ensure compliance with regulations, including *N.J.A.C.* 6A:23A-18.2, which pertains to private school employee salaries; in the instant matter, respondent asserted that the employee whose salary was partially disallowed was serving in a non-recognized job title and his salary was properly capped at the maximum permitted pursuant to *N.J.A.C.* 6A:23A-18.2(r); the petitioner argued that the position in question aligns to the duties and requirements of the recognized position of “Assistant Director” provided in *N.J.A.C.* 6A:23A-18.1, but included extra duties related to law, affirmative action and compliance. The ALJ concluded that the employee in question was acting as a Director of Law and Compliance, and not as Assistant Director of the school and his salary was properly capped. Accordingly, the ALJ affirmed the determination of the OSF, and dismissed the petition.

Upon a comprehensive review of this matter, the Commissioner agreed with the findings and conclusion of the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter and the petition was dismissed with prejudice.

<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>
---

October 31, 2019

OAL Dkt. No. EDU 08259-17  
Agency Dkt. No. 82-4/17

**New Jersey Commissioner of Education**  
**Final Decision**

The Children's Center of Monmouth  
County, Inc.,

Petitioner,

v.

New Jersey Department of Education, Office of  
School Finance,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner The Children's Center of Monmouth County (CCMC), and the reply thereto by respondent New Jersey Department of Education, Office of School Finance (Department) have been reviewed and considered.

This matter involves a challenge to the Department's audit findings that the write-off of uncollected debts and a portion of an employee's salary were unallowable costs for purposes of calculating the tuition rate for educating students at CCMC, an approved private school for students with disabilities (APSSD). The Administrative Law Judge (ALJ) granted the Department's motion for summary decision regarding the write-off on July 20, 2018, finding that the costs were not allowable as a matter of law. On August 12, 2019, the ALJ issued an Initial Decision, concluding that disallowing the salary of Peter Kalac, an employee of CCMC, was proper.

In its exceptions, which largely reference its briefs below and present the same arguments, petitioner argues that the ALJ's decision regarding the write-off failed to acknowledge that the Department's guidance regarding back-billing was equivocal. According to the petitioner, while the regulation might contemplate APSSDs billing sending districts prior to the second year following the Department's certification of the final tuition rate, the Department has sometimes supported the position of sending districts that they are under no obligation to pay until after the conclusion of an audit or appeals, which could take years. Petitioner contends that this representation was unrebutted and should have been accepted as fact by the ALJ for purposes of the motion for summary decision. Furthermore, petitioner claims that its efforts to collect the debts were hampered by the Department through a 2013 memo that discouraged districts from honoring the school's requests for payment.

Regarding the disallowance of compensation for Peter Kalac, petitioner argues that it is unclear why the ALJ believed that Mr. Kalac's testimony was "not credible". If the ALJ believed that Mr. Kalac misstated the facts when he testified that he actually performed the specific duties of Assistant Director as spelled out in the regulations, his testimony was never challenged by the Department; this served to unfairly blindside petitioner since there was no challenge to Mr. Kalac's testimony on that point at the hearing. If the ALJ rejected as a matter of law Mr. Kalac's belief that his overall workload fit the definition of an Assistant Director because of the extra duties he performed, those extra duties were expressly why the Department disallowed his compensation, in which case petitioner points to its post-hearing brief for its legal argument. Finally, petitioner contends that the ALJ failed to consider the Department's prior approval of Mr. Kalac's job title and duties.

In a reply that also reiterates arguments made below, the Department argues that *N.J.A.C. 6A:23-18.2(m)* is clear that billing must occur in the second school year following the school year for which the charge was agreed upon and that an APSSD must undertake reasonable efforts to collect outstanding tuition. In light of these requirements, the Department contends that the ALJ properly found that CCMC's efforts to bill sending districts up to nine years beyond the billing timeframe in *N.J.A.C. 6A:23-18.2(m)* were not reasonable. The Department also submits that petitioner's arguments regarding the 2013 memo mischaracterize it. Moreover, the Department notes that the memo was issued two months after CCMC sent bills for the prior decade, and even if the memo provided a valid excuse for CCMC's failure to engage in efforts to pursue collection after its issuance, it does not excuse CCMC's failure to make any attempts to collect sooner.

Regarding Mr. Kalac, the Department argues that the ALJ's credibility finding was supported by the record and that his testimony was rejected because of the extra job duties he performed, which is a proper application of the relevant law to the facts presented. The Department notes that no documents in the record support petitioner's contention that the Department had previously approved Mr. Kalac's job title and duties.

After a comprehensive review of the record, the Commissioner concurs with the findings of the ALJ. Regarding the bad debt write-offs, *N.J.A.C. 6A:23A-18.2(m)*<sup>1</sup> clearly contemplates that APSSDs will timely bill sending districts for the difference between tentative and final tuition rates. Petitioner admits that it failed to send tuition adjustment bills for the 2002-2003 through 2010-2011 school years until October 2013. Rather than making reasonable efforts to collect these debts, petitioner made no effort at all for up to ten years. Such a lengthy delay is precisely

---

<sup>1</sup> The regulations governing APSSDs were revised in July 2017. This decision references the regulations that were in place at the time of the events at issue in this case.

what the regulation was intended to prevent. *See* 49 *N.J.R.* 1855(a) (“a reasonable effort is a sufficient measure to prevent an APSSD from including the amounts for which the APSSD *failed to timely bill* as a ‘bad debt’ in the tuition charged to sending school districts” (emphasis added)). Furthermore, although petitioner seeks to lay the blame for its failure to collect at the feet of the Department, the Department’s actions are separate and distinct from petitioner’s. Neither the Department’s position that sending districts are not obligated to pay tuition adjustment bills until after an audit or appeals,<sup>2</sup> nor its 2013 memo regarding tuition adjustment, excuse CCMC’s failure to send tuition adjustment bills for the ten years prior to that time. Similarly, petitioner’s efforts to collect the bills after 2013 cannot cure its earlier failure.

Regarding the salary disallowance, Mr. Kalac’s employment contract lists his title as Assistant Director of Law, Affirmative Action and Compliance, which was not included in the list of recognized job titles published by the Department. Moreover, looking beyond the title itself to the job duties performed by Mr. Kalac, the Commissioner accepts the ALJ’s finding that Mr. Kalac’s testimony was not credible.<sup>3</sup> Furthermore, his job description lists fourteen responsibilities, eleven of which are not included in the regulatory definition of Assistant Director. Because the vast majority of his responsibilities are unrelated to defined Assistant Director tasks, the Commissioner agrees with the ALJ and concludes that Mr. Kalac’s role was significantly different from the role of

---

<sup>2</sup> The record includes an email in which the Department acknowledged that some sending districts want to receive a desk review certification letter before remitting payment to the APSSD. The Department continues by stating, “this is often a policy within the sending districts [sic] business office and/or governance manuals” and encourages petitioner to work with the sending district. It is not clear from this email that the Department’s position is that sending districts are not obligated to pay until after an audit or appeals, and – because the timing of the sending district’s payment is not the subject of this matter – the Commissioner declines to reach any conclusion on this issue. However, assuming for purposes of argument that a sending district is not obligated to pay until after an appeal or audit, it would not relieve the APSSD from timely billing the sending district, as is required by *N.J.A.C.* 6A:23A-18.2(m).

<sup>3</sup> Despite petitioner’s exceptions arguing that the ALJ’s finding on this point was unclear, the Commissioner finds that the ALJ’s credibility finding was clear and pertained to the nature of Mr Kalac’s overall role; as the ALJ stated, “the testimony of Mr. Kalac that he was acting as an Assistant Director was not credible.”

Assistant Director and therefore he served in an unrecognized job title.<sup>4</sup> The maximum salary for unrecognized job titles during the school years at issue was restricted to \$110,610, pursuant to *N.J.A.C.* 6A:23A-18.2(r), and prorated to \$44,244 for Mr. Kalac's part time employment. His salary of \$60,000 exceeded the maximum allowable amount by \$15,676, which the Department and the ALJ properly found was a non-allowable cost.

Accordingly, the Initial Decision is hereby adopted as the final decision in this matter; and the petition is dismissed with prejudice.

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision:      October 31, 2019  
Date of Mailing:       October 31, 2019

---

<sup>4</sup> Any prior approval by the Department of Mr. Kalac's salary is irrelevant to its audit for the years in question here. Petitioners' assertion regarding prior approvals is not supported by any documents in the record, and while the Department did not rebut this assertion, neither did it concede it. Nonetheless, the Department is not precluded from applying the requirements of *N.J.A.C.* 6A:23A-18.2(r) to disallow the excess salary in the audits at issue here, even if the salary was previously allowed.

<sup>5</sup> 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).



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 08259-17

AGENCY DKT. NO. 82-4/17

**THE CHILDREN'S CENTER OF  
MONMOUTH COUNTY, INC.,**

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF  
EDUCATION, OFFICE OF SCHOOL  
FINANCE,**

Respondent.

---

**David B. Rubin**, Esq., for petitioner, The Children's Center of Monmouth County, Inc.

**Jaclyn M. Frey**, Deputy Attorney General, for respondent, New Jersey Department of Education, Office of School Finance (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: July 29, 2019

Decided: August 12, 2019

BEFORE **SARAH G. CROWLEY**, ALJ:

## **STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner, The Children’s Center of Monmouth County, Inc. (CCMC), a private school for students with disabilities, appeals the determination of respondent, the Department of Education’s Office of School Finance (OSF), to classify a portion of an employee’s salary for the 2012-2013 and 2013-2014 school years as a “non-allowable expenditure.” CCMC also appealed OSF’s determination that the write-off of certain uncollected accounts receivable is a “non-allowable expenditure.” CCMC filed its appeal with the Department of Education and the Department transmitted the matter to the Office of Administrative Law (OAL) as a contested case. N.J.S.A. 52:14B-1 to -13; N.J.S.A. 52:14F-1 to -13. On March 8, 2018, CCMC moved for summary decision. On March 26, 2018, OSF cross-moved for summary decision maintaining that its decisions were proper as a matter of law. The parties presented oral argument before the undersigned on May 25, 2018, and the cross-motion of the state on the issue of the write-offs was granted. The undersigned ruled that the uncollected accounts receivables were non-allowable as a matter of law. The petitioner’s motion for summary decision on other issues was denied. The hearing was conducted on April 18, 2019, and the record closed after written summations from the parties were received on July 29, 2019.

## **STATEMENT OF FACTS**

CCMC is an approved private school for students with disabilities in accordance with N.J.A.C. 6A:23-18.1 et. seq.<sup>6</sup> As far back as 2002, CCMC contracted with various New Jersey public school districts to receive preschool disabled children and charge the sending districts a tentative tuition rate for educating the students. Pursuant to N.J.A.C. 6A:23-18.1; N.J.S.A. 18A:46-21, the actual cost per student is later calculated and submitted to the Commissioner of Education (Commissioner) for approval.

---

<sup>6</sup> The regulations governing private schools who receive public students with disabilities, N.J.A.C. 6A:23-18.1 et. seq. were revised in July 2017. See 49 N.J.R. 365(a); 49 N.J.R. 1855 (a). Because the current regulations were revised, some substantially, this decision references the then existing regulations that petitioner was required to adhere to, which included the 2012-2014 regulations.



In accordance with N.J.A.C. 6A:23A-18.9,<sup>7</sup> CCMC obtained independent audited financial statements for the 2012-2013 and 2013-2014 school years. CCMC submitted the financial statements, which detailed the tuition costs, to the Commissioner for approval. Ibid. The Department of Education's Office of School Finance (OSF) is responsible for reviewing CCMC's audited financial statements to ensure compliance with Department's guidelines and regulations.

On June 17, 2016, OSF issued two letters informing CCMC that its audited financial statements for the 2012-2013 and the 2013-2014 school years conflicted with the Department's regulations. Specifically, the OSF informed CCMC that it "reviewed the audited financial statements for the 2012-2013 school year" and found that the employment contract of

Mr. Peter Kalac reflects the unrecognized administrative position title of Director of Law, Affirmative Action and Compliance. In accordance with N.J.A.C. 6A:23-18.2(r), private schools for students with disabilities may use unrecognized administrative job titles, but the maximum salaries of these titles are restricted in accordance with N.J.A.C. 6A:23A-18.5(a)9 . . .

Mr. Kalac's part time salary of \$60,000 is in excess of the prorated part time lowest maximum salary of \$44,244 . . . As such, the excess salary of \$15,756 and the associated benefits must be considered non-allowable costs when calculating the Certified Actual Cost Per Student.

The petitioner argues that the disallowance of Kalac's salary was improper and that his salary and benefits should not have been disallowed just because he had an unrecognized job title. They also argue that they should have looked beyond his title to what his job duties were. The only issue is what these duties were and whether the salary of Peter Kalac which exceeds the maximum allowable salary under the statute is allowable.

---

<sup>7</sup> Current N.J.A.C. 6A:23A-18.10.

## **TESTIMONY AND FINDINGS OF FACT**

### **For petitioner**

**Peter Kalac** testified regarding his job duties and his role at the school. He is an attorney by trade and he practices school law and workers compensation. He started getting involved in the IDEA and saw that Districts were not doing a good job of serving children with disabilities, so he decided to open a school in Monmouth County. The school opened in 1990 for children with disabilities, mostly autistic children. He created the job title for himself and it was part of the contract. He also served as legal counsel handling anything from workers compensation to lawsuits regarding injuries at work. He had a lot of issues with workers compensation, so he handled a lot of that for the school. However, he was also involved in school plans as well, and went to one meeting a month, where they discussed everything from hiring to termination.

He was also the affirmative action officer and met with someone in State about their hiring practices. He dealt with a lot of Human Resources issues with employees. He testified that Assistant Director was an accurate description of what he did, but they had labeled it something else. If they had told him it was a problem, he would have changed it. He testified about the contract and the job duties listed in the contract. On cross-examination, it was pointed out that there are several things that are not listed but he handled as an assistant administrator for the school. He testified that a great deal of what he did was related to his practice involving school law issues and representing school boards. He reemphasized that if he knew it was an issue, he would have given himself a different title.

### **For respondent**

**Elsie Sadler Williams** is an auditor for the New Jersey Department of Education. She was responsible for the audit conducted of the petitioner in this case. She has been with the Department since 2001 and is responsible for fiscal oversight of private schools for children with disabilities. She testified that most of the funding

comes from Local Education agencies in the form of tuition reimbursement. She was involved in the audit of the Children's school from 2011- 2012, 2012-2013 and 2013-2014. Mr. Kalac's job title was not listed as one of the authorized job titles, so payment above the maximum allowance was not permitted. If they are not using appropriate titles that is why it is held to the lowest maximum tile and since he was only a part-time employee, it was adjusted accordingly.

Ms. Williams testified that the school argued that his job title aligned with that of the Assistant Director. However, she reviewed the job description, and disagreed, finding that his job duties were more of a legal nature. She testified that if someone wanted approval for a title that was not recognized, they could have gone to the County Superintendent and obtained approval to have someone work outside a title. It appeared to her that not only was he performing duties outside the scope of the assistant director, he had a different job title. If he had the correct job title, they may not have flagged it, but looking at his duties, it was clear to her that he was not acting as an assistant director, and thus, the maximum permitted salary was appropriately capped. A director of law and compliance is not an authorized position. She believed upon review of what he was doing that he was in fact acting as a director of law and compliance and not the assistant director of the school. Accordingly, the salary was properly capped.

The resolution of the issue in this case requires that I make a credibility determination regarding the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of fact. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experiences and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story considering its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718,749 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not

directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone, or in connection with other circumstances in evidence, excite suspicion as to its truth. In re Perrone, 5 N.J. 514. 521-22 (1950). See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses, it is my view that the testimony of Mr. Kalac that he was acting as an Assistant Director was not credible. Moreover, his own testimony contradicted such a finding. It is clear that his background was in law, and he was acting as a director of law and compliance and not a director of school. Therefore, I **FIND** as **FACT** that Mr. Kalac was the assistant director of law and compliance at CCMC.

### **LEGAL ANALYSIS**

Private schools for children with disabilities are governed by N.J.S.A. 18A:46-21. This enabling statute authorized the New Jersey Department of Education to promulgate regulations governing the tuition rates that approved private schools for students with disabilities (APSSD) may charge local public-school districts. Brookfield Schools v. New Jersey State Dep't of Ed., Div. of Finance, EDU 11447-10, Initial (June 15, 2011) adopted Comm'r (July 28, 2011).

To that end, the OSF reviews audited financial statements to ensure compliance with the Department's regulations, including N.J.A.C. 6A:23A-18.2,<sup>8</sup> the regulation pertaining to private school employee salaries. N.J.A.C. 6A:23A-18.2, states, in pertinent part:

(o) An APSSD shall reference as guidance the list of maximum allowable salaries by job title and county, according to the job titles contained in N.J.A.C. 6A:9, which pertain to approved private schools for students with disabilities that is published by the Commissioner . . .

---

<sup>8</sup> Current N.J.A.C. 6A:23A-18.3.

(p) An APSSD shall reference as guidance a list of maximum allowable salaries by administrative and job titles and county according to the job titles contained in N.J.A.C. 6A:9 and 6A:23A-18.1 which pertain to approved private schools for students with disabilities that is published by the Commissioner . . .

(r) An APSSD shall employ staff pursuant to the list of the recognized job titles in accordance with N.J.A.C. 6A:9 that require certification and N.J.A.C. 6A:23A-18.1 that require a bachelor's degree, which is published by the Commissioner. An approved private school for students with disabilities shall only hire staff or consultants in job titles that require certification or a bachelor's degree if such titles are included on the list, or if such titles are unrecognized job titles that are approved annually in accordance with N.J.A.C. 6A:9B-5.5. The APSSD may use unrecognized administrative job titles, but maximum salaries for the titles are restricted in accordance with N.J.A.C. 6A:23A-18.5(a)(9). If an APSSD hires staff in administrative or support job titles such as but not limited to Chief Executive Officer or Chief Financial Officer, the maximum salaries of such job titles shall be limited to the maximum salary of a director in accordance with N.J.A.C. 6A:23A-18.2(p).

[N.J.A.C. 6A:23A-18.2(o), (p), (r).<sup>9</sup>]

For the 2012-2013 and 2013-2014 school years, the Office School Finance listed the following approved administrative positions for private schools:

- 0700 Director
- 0701 Assistant Director
- 0702 Executive Director
- 0703 Business Manager

See Annual Information – Private Schools for Students with Disabilities – Recognized Job Titles – Effective July 1, 2012 – Attachment 1 Office of Fiscal Research and Data Planning (May 24, 2012), <https://www.nj.gov/education/finance/fp/psd/1213/annual.shtml>; see also Annual Information – Private Schools for Students with Disabilities – Recognized Job Titles –

---

<sup>9</sup> Current N.J.A.C. 6A:23A-18.3(o)(p)(q).

Effective July 1, 2013 – Attachment 1 Office of Fiscal Research and Data Planning (June 11, 2014), <https://www.nj.gov/education/finance/fp/psd/1314/annual.shtml>.

N.J.A.C. 6A:23A-18.1<sup>10</sup> defines Assistant Director as:

An individual whose job function includes a majority of the following: the formulation of school goals, plans, policies, and budgets and the recommendation of their approval to the school's board of directors; the recommendations for all staff appointments and other personnel actions, such as terminations, suspensions and compensation, including the appointment of the business manager to the school's board of directors; responsibility for school operations and programs including administration, supervision and evaluation of administrators, supervisors, and all other school staff. The holder of this job title shall hold a bachelor's degree from an accredited institution but is not required to hold a school certification.

[N.J.A.C. 6A:23A-18.1.]

Pursuant to N.J.A.C. 6A:23A-18.2(r),<sup>11</sup> the Commissioner determined that “whether salaries and fringe benefits of certain employees should properly be considered in establishing tuition rates payable to [APSSDs] requires one to look beyond titles and determine what the employee actually does.” Youth Consultation Serv. v. Dep’t of Ed., EDU 03573-06, Initial (Aug 6, 2007) adopted Comm'r (Oct 4, 2007) [https://njlaw.rutgers.edu/collections/oal/html/initial/edu03573-06\\_1.html](https://njlaw.rutgers.edu/collections/oal/html/initial/edu03573-06_1.html).

In Youth Consultation Serv., the OFPP found that a private school improperly charged the salaries of certain staff, functioning in unrecognized position titles, as part of its certified tuition rates. Ibid. The court, in its finding of facts, held that the duties, and not title alone, determined whether the position was an unrecognized title. Ibid. For example, the court held that “the duties of those individuals designated as Head Teachers (an unrecognized title) . . . primarily involve direct student instruction and not the continuing direction and guidance of the work of instructional personnel.” Ibid. Thus, “their duties correlate to those of certified Teachers of the Handicapped rather

---

<sup>10</sup> Current N.J.A.C. 6A:23A-18.2.

<sup>11</sup> Current N.J.A.C. 6A:23A-18.3(q).

than Supervisors and that the lack of a Supervisor's certificate is not a basis for disallowing their salaries and fringe benefits." Ibid.

The Supreme Court also found that "[a]s Yvonne Montemurro is charged with authority and responsibility for the continuing direction and guidance of the work of instructional personnel, I conclude that she is a supervisor within the meaning of N.J.A.C. 6A:9-12.3(c) rather than occupying an administrative position" as [the private school designated.] Thus, her salary and fringe benefits are disallowed by N.J.A.C. 6A:23-4.5(a) 6 and 10." Ibid.; see also Cerebral Palsy League of Union County v. N.J. Dep't of Educ., EDU 11301-07, Initial Decision (June 14, 2010), adopted, Comm'r (July 29, 2010) (stating disallowances that involve job duties is required to be guided by the actual job functions of the employee at issue.) [https://njlaw.rutgers.edu/collections/oal/final/edu11301-07\\_1.pdf](https://njlaw.rutgers.edu/collections/oal/final/edu11301-07_1.pdf).

In the instant matter, OSF asserts that the Recognized Job Titles List in effect during the relevant time permitted the position of Assistant Director. However, Mr. Kalac's employment contract listed the administrative title of "Director of Law, Affirmative Action and Compliance." In accordance with N.J.A.C. 6A:23A-18.2(r), although an APSSD may use an unrecognized title, it is restricted to a maximum salary of \$44,244. CCMC concedes that Mr. Kalac's title includes additional words – of Law, Affirmative Action and Compliance – that were not included in the approved title of Assistant Director, it argues that his actual job duties align with the requirements of "Assistant Director" provided in N.J.A.C. 6A:23A-18.1,<sup>12</sup> and simply include extra duties related to Law, Affirmative Action, and Compliance. However, the testimony of Mr. Kalac demonstrates that although some of the duties he performs correspond with the definition of an Assistant Director provided at N.J.A.C. 6A:23A-18, the majority of Mr. Kalac duties related to legal issues and compliance. I therefore, **CONCLUDE** that Mr. Kalac was acting as a Director of Law and Compliance, and not an Assistant Director of the school, and thus his salary was property capped and he is not entitled to reimbursement above the maximum permitted pursuant to N.J.A.C.

---

<sup>12</sup> Current N.J.A.C. 6A:23A-18.2.

6A:23A-18.2(r). Accordingly, the decision of the OSF is **AFFIRMED** and the appeal is **DISMISSED**.

### **CONCLUSION**

Accordingly, I **CONCLUDE**, that the duties of Peter Kalac mainly that of a legal and compliance director and not the assistant director of the school, and thus the salary disallowance was proper.

### **ORDER**

I hereby **ORDER** that the petitioner's appeal is **DISMISSED** and the determination of the OSF is **AFFIRMED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.



Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



August 12, 2019 \_\_\_\_\_

DATE

\_\_\_\_\_  
**SARAH G. CROWLEY, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

SGC/cb

**APPENDIX**

**WITNESSES**

**For petitioner:**

Peter Kalac

**For respondent:**

Elsie Sadler Williams, Auditor

**EXHIBITS**

**For petitioner:**

None

**For respondent:**

- R-1 Children's Center of Monmouth County, Inc.'s 2012-2013 Annual Fiscal and Program Information Forms
- R-2 Children's Center of Monmouth County, Inc.'s Financial Statements and Auditor's Report for Fiscal Year Ended June 30, 2013
- R-3 Children's Center of Monmouth County, Inc.'s 2013-2014 Annual Fiscal and Program Information Forms
- R-4 Children's Center of Monmouth County, Inc.'s Financial Statements and Auditor's Report for Fiscal Year Ended June 30, 2014
- R-5 July 10, 2015 Letter from Elise Sadler-Williams to Joseph Merola, Jr. regarding 2012-2013 school year
- R-6 Department of Education's Calculation of Peter Kalac's Maximum Allowable Part-Time Salary
- R-7 July 10, 2015 Letter from Elise Sadler-Williams to Joseph Merola, Jr. regarding 2013-2014 school year
- R-8 October 26, 2015 Letter from Children's Center of Monmouth County, Inc.'s Executive Director Joseph Merola, Jr. to Elise Sadler-Williams with Peter Kalac's contract and job description attached

- R-9 June 16, 2016 Letter from Elise Sadler-Williams to Joseph Merola, Jr. regarding 2012-2013 school year
- R-10 June 17, 2016 (\*restated) letter from Elise Sadler-Williams to Joseph Merola, Jr. regarding 2012-2013 school year
- R-11 Memo and List of Recognized Job Titles, 2012-2013
- R-12 Table of Maximum Salaries for the 2012-2013 School Year
- R-13 June 17, 2016 letter from Elise Sadler-Williams to Joseph Merola, Jr. regarding 2013-2014 school year
- R-14 Memo and List of Recognized Job Titles, 2013-2014
- R-15 Table of Maximum Salaries for the 2013-2014 School Year
- R-16 June 22, 2016 Letter from Robert A. Fodera, CPA to Elise Sadler-Williams
- R-17 December 1, 2016 Letter from David B. Rubin to Michael Mindlin
- R-18 April 10, 2017 Letter from Michael Mindlin to David Rubin, Esq.