

SB #7-05

IN THE MATTER OF THE RECOVERY OF :  
FUNDS FROM THE PASSAIC COUNTY : STATE BOARD OF EDUCATION  
TECHNICAL INSTITUTE'S 2004-2005 : DECISION  
TITLE 1 ALLOCATION, PASSAIC COUNTY. :

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Decided by the Commissioner of Education, January 18, 2005

Decision on motion by the State Board of Education, June 1, 2005

For the Appellant, Adorno & Yoss, LLP (Mary Pat Gallagher, Esq., of  
Counsel)

For the Participant Commissioner of Education, Cindy Campbell, Deputy  
Attorney General (Peter C. Harvey, Attorney General of New  
Jersey)

As the result of an error in the formula programming, the Department of Education provided the Passaic County Technical Institute (hereinafter "appellant") with funding in the amount of \$2,400,517 under Title I of the No Child Left Behind Act, 20 U.S.C. §6301 et seq., for the 2003-04 school year, rather than \$1,432,482 to which it was entitled. The Department subsequently notified the appellant that it would be recovering the difference by debiting the overfunding from the appellant's Title I allocations over a three-year period commencing in the 2004-05 school year.

In a letter to the Commissioner dated December 21, 2004, the appellant's Chief School Administrator contended that the amount of Title I funding the appellant had received for 2004-05 as a result of such recoupment was inequitable and in violation of

the hold-harmless provisions of No Child Left Behind. The appellant sought “to pay back any abatement at a maximum rate that would not exceed 15% of any previous years allocation, with initial reductions based on the \$2.5M dollars [the appellant] received in the 2003-2004 school year.”

On January 18, 2005, the Commissioner rejected the appellant’s contention. The Commissioner explained that the Department was obligated to recover the overfunding and that it was spreading the debiting over a three-year period in order to mitigate the effect on the appellant. He pointed out that the Department was required to correct overfunding errors as soon as possible pursuant to federal regulations and proper accounting procedures.

On February 18, 2005, the appellant filed the instant appeal to the State Board. Although the appellant does not dispute that an overpayment occurred and that the Department is required to recoup those funds, it contends that the funding provided to it under Title I for the 2004-05 school year is inequitable and violates the hold-harmless provisions of No Child Left Behind, and it seeks a recoupment schedule that extends over a longer period of time. The appellant requests that “the repayment in any given year be limited to fifteen percent of the prior year’s Title I allocation with the initial reductions based on the 2003-2004 allocation of \$2,400,517.00.” Reply Brief, at 3.

On June 1, 2005, we granted the Commissioner’s motion to participate in this matter.

After a thorough review of the record, we reject the appellant’s arguments and dismiss the appeal. The appellant has not shown that the Department did not have the discretion to establish a schedule for recouping the overfunding at issue or that it

abused that discretion in establishing a three-year recoupment schedule. Nor has the appellant demonstrated that the Department otherwise acted in a manner that was arbitrary, capricious or unreasonable in establishing such a schedule. Nor has the appellant shown that the recoupment schedule established by the Department is inequitable.<sup>1</sup> In the absence of such a showing, we would not disturb the Commissioner's determination.<sup>2</sup>

Josephine E. Figueras abstained.

September 7, 2005

Date of mailing \_\_\_\_\_

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<sup>1</sup> We note that although the appellant argues that the Title I funding it received for the 2004-05 school year, \$1,333,435, was significantly less than the amount it had received in 2003-04, \$2,400,517, the appellant does not contest the Department's conclusion that the funding it received in 2003-04 was \$968,035 greater than it should have received due to an error.

<sup>2</sup> To the extent the appellant is seeking to challenge the Department's action as being in violation of federal law, we stress that this agency is not the proper forum for determining such a claim.