

Commissioner of Education
Decision

OAL DKT. NO. EDU 5979-04
AGENCY DKT. NO. 80-2/04

WINDSOR LEARNING CENTER, INC., :
PETITIONER, :
V. :
NEW JERSEY STATE DEPARTMENT OF :
EDUCATION, OFFICE OF COMPLIANCE, :
RESPONDENT. :

OAL DKT. NO. EDU 5980-04
AGENCY DKT. NO. 75-2/04

SHEPARD ACADEMY, INC., :
PETITIONER, :
V. :
NEW JERSEY STATE DEPARTMENT OF :
EDUCATION, OFFICE OF COMPLIANCE, :
RESPONDENT. :

OAL DKT. NO. EDU 5981-04
AGENCY DKT. NO. 78-2/04

SHEPARD HIGH SCHOOL, INC., :
PETITIONER, :
V. :
NEW JERSEY STATE DEPARTMENT OF :
EDUCATION, OFFICE OF COMPLIANCE, :
RESPONDENT. :

OAL DKT. NO. EDU 5982-04
AGENCY DKT. NO. 77-2/04

WINDSOR PREP., INC., :
PETITIONER, :
V. :
NEW JERSEY STATE DEPARTMENT OF :
EDUCATION, OFFICE OF COMPLIANCE, :
RESPONDENT. :

OAL DKT. NO. EDU 5983-04
AGENCY DKT. NO. 76-2/04

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OAL DKT. NO. EDU 5984-04
AGENCY DKT. NO. 79-2/04

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EDUCATION, OFFICE OF COMPLIANCE, :
RESPONDENT. :

SYNOPSIS

The six petitioners in these consolidated appeals challenged the disallowance of legal fees incurred in connection with the defense against criminal charges – leading to the convictions for theft by deception of two former directors and the corporate entities – in their final approved tuition rates for the 2001-2002 and 2002-2003 fiscal years. Petitioners challenged the disallowance as arbitrary, capricious and unreasonable; argued that the fees incurred in the defense of the six schools should be recognized as a legitimate operating expense even if the disallowance of the legal fees incurred in the defense of the individual directors is upheld; and requested that the Commissioner exercise her powers to extend the time for repayment of any disallowed expenses beyond the thirty day period set forth in the regulations.

The ALJ found, *inter alia*, that the Department's disallowance represents an appropriate exercise of agency expertise in the field of school financing and does not detract from the established principle that schools may include professional fees related to *bona fide* educational purposes in their tuition rates; the equities do not predominate in favor of extending the 30-day period for petitioners to make restitution of tuition overcharges, but, rather, clearly lie in favor of the public getting its money back as soon as possible. The ALJ granted summary decision to the Department, and denied the relief requested by petitioners.

Upon a thorough and independent review, the Commissioner adopts the Initial Decision of the OAL as the final decision in this matter, emphasizing that – even assuming, *arguendo*, she had the authority to extend the 30-day timeline prescribed by regulation for the repayment of these monies – public policy and the equities in this matter militate against such an action.

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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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners’ exceptions and the Department’s reply thereto were filed in accordance with the requirements of *N.J.A.C.* 1:1-18.4.

Petitioners’ exceptions essentially recast and reiterate their arguments advanced before the Administrative Law Judge (ALJ) below, *i.e.*, the Department’s determination to disallow legal fees incurred by the schools was arbitrary, capricious and unreasonable because it contained no explanation or justification; such disallowance represents ad-hoc rule making on the part of the Department which is prohibited by *Metromedia, Inc. v. Director, Div. of Taxation*, 97 *N.J.* 313 (1984); and – should the petitioners be required to repay these monies – principles of equity demand that the regulatory provision requiring that such repayment be made within 30-days after resolution of an appeal be waived. In that the Commissioner finds that each of

petitioners' exception advancements was fully and fairly considered and addressed in the Initial Decision, these will not be revisited here.

Upon a thorough and independent review, the Commissioner is in accord with the ALJ's grant of summary decision to the Department, as she concurs with his determination that the Department appropriately disallowed legal fees incurred in connection with the defense against criminal charges – leading to the convictions for theft by deception of two former directors and the corporate entities – from petitioners' approved tuition rates for the 2001-02 and 2002-03 fiscal years. The Commissioner further agrees that even assuming, *arguendo*, she had the authority to extend the 30-day timeline prescribed by regulation for the repayment of these monies, public policy and the equities in this matter militate against such an action.

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

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 6, 2006

Date of Mailing: April 7, 2006

* 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.*