

CEREBRAL PALSY LEAGUE OF :
UNION COUNTY, :
 :
PETITIONER, :
 :
V. : COMMISSIONER OF EDUCATION
 :
NEW JERSEY STATE DEPARTMENT OF : DECISION
OF EDUCATION, DIVISION OF FINANCE, :
 :
RESPONDENT. :

SYNOPSIS

Petitioner – the Cerebral Palsy League of Union County (CLP) – owns and operates Jardine Academy, a private school for the disabled (PSD) which serves children with disabilities who require medical as well as educational services. Petitioner appealed the Department’s determination to disallow \$137,319 of salary and fringe benefits for three of its employees – two music therapists, and a coordinator of instruction – for the 2003-2004 school year. The Department found that the employees were in unrecognized job titles without Department approval, and petitioner was ordered to refund tuition payments to the affected public school sending districts.

The ALJ cited to *Youth Consultation Service, Inc. v. New Jersey State Department of Education, Office of Fiscal Policy and Planning*, in finding, *inter alia*, that: the determination of whether salaries and related benefits of certain employees should properly be considered in establishing tuition rates payable to PSDs requires an examination of what an employee actually does; based on the CLP’s job description and testimony at hearing, the duties of the music therapist are such that they do not require an instructional certificate, and the duties of the coordinator of instruction position likewise do not require an administrative certificate with an endorsement as supervisor; and the Department improperly determined that the salaries and fringe benefits of the three employees in question were non-allowable costs. The ALJ ordered that the duties of the music therapist position correlate to those of a non-certificated teacher aide or paraprofessional rather than a teacher, and the duties of the coordinator of instruction position correlate to those of a teacher rather than a supervisor; accordingly, the Department had no basis upon which to disallow the \$137,319 of salary and fringe benefits for the three positions.

Upon full consideration of the record, and exercising the required deference to the ALJ’s implicit credibility assessments, the Commissioner determined to adopt the Initial Decision as the final decision in this matter, for the reasons stated therein.

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.

July 29, 2010

OAL DKT. NO. EDU 11301-07
AGENCY DKT. NO. 138-5/07

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions and petitioner’s reply thereto – filed in accordance with *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein.

Exceptions of the Department first maintain that the Administrative Law Judge (ALJ) erred in rejecting the Department’s disallowance of the salary and benefits of Dawn Huss. In so determining, it charges, she found that the Coordinator of Instruction position was more akin to the responsibilities of the “Head Teacher” position in *Youth Consultation Service, Inc.* [YCS] v. *New Jersey State Department of Education, Office of Fiscal Policy and Planning*, Commissioner’s Decision No. 394-07, decided October 4, 2007. The Department advances that the evidence in the record regarding the actual job functions in YCS is distinguishable from that present in this matter. In YCS, it argues, the ALJ’s decision turned on hearing testimony which elaborated on the duties listed in the job description of Head Teacher. Here, it charges, there was no such elaboration but only “conclusory statements that the job function is not supervisory,” nor are there any facts in the record to establish that the duties of the Coordinator of Instruction position differed in any

meaningful respect from the job description provided to the Department. (Department's Exceptions at 2-3, quote at 3) Also instructive, the Department points out, is that the job description for this position "even states that administrative/supervisory experience and a Masters degree is preferred." (*Id.* at 4) Most importantly, it argues, it is critical that the Department be allowed to rely on job descriptions provided by the school during the audit process in reaching its determinations. The Department, therefore, argues that as Ms. Huss did not possess a Supervisor's certificate in the 2003-04 school year and the record is devoid of factual support for a conclusion that her duties were limited to a non-supervisory role, the determination disallowing her salary and benefits for this school year must be upheld. (*Id.* at 4-5)

Next, the Department contends that the ALJ's rejection of its disallowance of the salaries and benefits of Joanne Schlachter and Cynthia Pellegrino – employed as music therapists during the 2003-04 school year – because they "did not provide direct instruction, but rather assisted properly certified personnel with the supervision of pupil activities," similarly has no basis in the record. The Department contends that the record does not contain any evidence whatsoever of which instructional staff music therapists assisted but rather, again, contains only "conclusory statements" that these individuals did not teach music but only assisted instructional staff. Absent any definitive testimony regarding the specific instructional staff that these individuals assisted, it professes, the Department's determination disallowing their salaries and benefits must be upheld. (Department's Exceptions at 5-7, quote at 6)

Pages 1-28 of petitioner's Reply Exception submission is a verbatim presentation of its post-hearing brief advanced below. Petitioner concludes this submission by arguing that the crux of this case is the Department's position that its consideration of this matter was properly limited to an examination of the language of the individuals' job descriptions without regard to what their duties actually were. This position, petitioner argues, is wholly belied by the Commissioner's

decision in *Youth Consultation Service, supra*. Here, in line with the principles established in YCS, the ALJ looked beyond the language of the job descriptions alone and found the unrebutted testimony of the school's witness, Patricia Tekel, as to actual duties these individuals performed to be credible. Petitioner argues that this credibility determination is entitled to "considerable deference." It urges that the Commissioner adopt the Initial Decision in its entirety. (*Id.* at 31)

Upon full consideration of the record – which included transcripts of the hearing conducted on April 15 and 16, 2009 – and exercising the requisite deference to the ALJ's implicit assessment of the credibility of the witnesses,¹ the Commissioner is compelled to adopt the recommended Initial Decision.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons stated therein.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 29, 2010

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¹ The applicable standard of review in this regard is clear and unequivocal – the Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record." (*N.J.S.A. 52:14B-10(c)*) A reasoned review of the record, with this governing standard in mind, does not provide a basis for concluding that the ALJ's implicit credibility assessments and resultant fact finding were without the requisite level of support.

² 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*)