

CHANCELLOR ACADEMY, :
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 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY DEPARTMENT OF : DECISION
 EDUCATION, DIVISION OF FINANCE, :
 :
 RESPONDENT. :
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SYNOPSIS

Chancellor Academy (Chancellor) appealed the Department’s determination that petitioner – a private school for students with disabilities (PSSD), which is authorized to receive special education students from public school districts on a tuition basis – may not include in its tuition charges for the 2008-09 school year: 1) the cost of health insurance premiums paid on behalf of the school nurse while she was on an unpaid leave of absence, and 2) that portion of the salary paid to a teacher, Lisa McConagly, which exceeded the maximum salary permitted for vocational teachers under Department regulations. Petitioner asserted that these costs should be allowed in the calculation of its actual cost per pupil for the year in question. The Department contended that these costs must be disallowed under applicable regulations.

The ALJ found, *inter alia*, that: regarding the cost of health care premiums for Chancellor’s school nurse while she was on an unpaid leave of absence, *N.J.A.C. 6A:23A-18.5(a)(7)* is clear and unambiguous in precluding a PSSD from passing such an expense on to the taxpayers of New Jersey; regarding the salary paid to McConagly during the 2008-09 school year, credible testimony supported Chancellor’s assertion that McConagly was employed during that year as a “general teacher” who provided instruction in home economics/food preparation; McConagly did not serve as a vocational teacher, and therefore her job category was not misclassified as the Department contended; further, the April 8, 2013 letter from the school’s former principal, John Syvertsen – which stated that he had made an error in McConagly’s job description for the 2008-09 school year – conflicts with the Department’s claim that Chancellor failed to offer any information that would have permitted it to change its determination that McConagly was a vocational teacher. The ALJ concluded that: 1) the Department correctly disallowed the expenses related to the school nurse’s health benefits for the period in question; and 2) the Department erred in disallowing the portion of McConagly’s salary that exceeded the maximum permitted for a vocational teacher. Accordingly, the ALJ ordered the Department to reverse the disallowance associated with McConagly’s salary.

Upon a thorough review of the record, the Commissioner concurred with the ALJ’s findings and conclusion in regard to the disallowance of the cost of health insurance for the school nurse during her unpaid leave of absence. However, the Commissioner disagreed with the ALJ’s determination to overturn respondent’s disallowance of a portion of McConagly’s salary, as he found that the disallowance was in accord with *N.J.A.C. 6A:23A-18.5(a)(8)*, and was not arbitrary, capricious, or unreasonable. The Commissioner found that petitioner’s *ex post facto* presentation of contradictory evidence at the OAL did not undermine the reasonableness of respondent’s determination during the internal appeal process. The Initial Decision of the OAL was adopted as modified, and the petition was dismissed.

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.

April 24, 2014

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

Petitioner is a private school for students with disabilities (PSSD), authorized by the New Jersey Department of Education (Department) to receive special education students from public school districts on a tuition basis. Petitioner appeals from respondent's September 21, 2012 determination that the following costs, which petitioner included in the calculation of its certified actual cost per student (CACPS) for the 2008-09 school year, were non-allowable costs: 1) health insurance premiums paid on behalf of the school nurse while she was on an unpaid leave of absence, and 2) that portion of the salary paid to Lisa McConagly which exceeded the maximum salary permitted for vocational teachers under Department regulations.

In the Initial Decision, the Administrative Law Judge (ALJ) upheld respondent's disallowance of the health insurance premiums paid on behalf of the school nurse, finding that *N.J.A.C. 6A:23A-18.5(a)(7)* clearly and unambiguously precludes a PSSD from passing such an expense on to the taxpayers of New Jersey. However, regarding McConagly's salary, the ALJ found that respondent's disallowance was in error and should be reversed. To that end, the ALJ was persuaded by testimony at the hearing that McConagly's actual job function during the 2008-09 school year was that of a "general teacher" rather than a "vocational teacher," notwithstanding statements to the contrary in her job description and employment contract. Accordingly, the ALJ determined that the maximum allowable salary for vocational teachers was inapplicable to McConagly's salary, and the disallowance should, therefore, be reversed.

On exception, with respect to the issue of the health insurance premiums paid on behalf of the school nurse, the parties essentially recast and reiterate the arguments they advanced before the ALJ below. In that the Commissioner finds that those arguments were fully considered and appropriately addressed in the Initial Decision, they will not be revisited here.

On the issue of McConagly's salary, respondent takes exception to the ALJ's factual and legal conclusions, underscoring that its determination may not be overturned unless it can be characterized as arbitrary, capricious, or unreasonable. Respondent argues that its determination to disallow a portion of McConagly's salary was reasonable based upon the documentation petitioner had submitted for respondent's review, and that the ALJ failed to properly consider the evidence that was before respondent at the time it made its determination.

More specifically, respondent cites page 10 of the Initial Decision, where the ALJ states:

The Department urges that Chancellor failed to offer any information that would have permitted it to change its

determination that McConagly was a vocational teacher. But Syvertsen's letter made it plain that any provisions of the contract or job description that would lead the Department to so conclude was in error. So did subsequent correspondence from counsel for Chancellor.

Respondent points out that, contrary to the ALJ's implication, respondent did not have the benefit of Syvertsen's letter prior to issuing the September 21, 2012 decision on petitioner's internal appeal. In fact, Syvertsen's *mea culpa* letter of April 8, 2013, postdated respondent's decision by more than six (6) months. Thus, the information contained therein could not possibly have informed respondent's decision.

More generally, respondent argues that it must be permitted to rely upon the accuracy of the documents submitted by a PSSD during the desk review process. Respondent emphasizes that PSSDs are well aware of the audit program and the significance of the review process. Thus, respondent has every reason to believe that PSSDs submit accurate documentation for its review. Respondent further emphasizes that PSSDs are afforded multiple opportunities to submit documentation and information for its consideration during the review and internal appeal processes. Respondent contends that, in this case, despite having been afforded those opportunities, petitioner failed to offer anything that would have permitted it to change its determination respecting the disallowance of a portion of McConagly's salary. Respondent further contends that it did not act in an arbitrary, capricious, or unreasonable manner in issuing a decision based upon the evidence that was submitted to it by petitioner.

Upon a review of the record, the Commissioner concurs with the ALJ's conclusion that, pursuant to *N.J.A.C. 6A:23A-18.5(a)(7)*, petitioner was not permitted to pass on to the taxpayers of New Jersey the expenses incurred in continuing the school nurse's health insurance benefits during her unpaid leave of absence. Accordingly, the Commissioner agrees

with the ALJ's determination to uphold respondent's disallowance of those expenses. The Commissioner disagrees, however, with the ALJ's determination to overturn respondent's disallowance of a portion of McConagly's salary. The Commissioner finds that the disallowance was in accord with *N.J.A.C. 6A:23A-18.5(a)(8)*, and was not arbitrary, capricious, or unreasonable.

As a PSSD, petitioner is required to set its tuition rate annually in accordance with the Department's regulations. Pursuant to *N.J.S.A. 18A:46-21*, the tuition rate may not exceed the actual cost per pupil, as determined in accordance with *N.J.A.C. 6A:23A-18.1 et seq.* Those regulations specify that certain enumerated costs are not allowable in the calculation of the CACPS. *N.J.A.C. 6A:23A-18.5*. Among the enumerated costs that are not allowable in the CACPS are "[t]he salary and fringe benefits of a staff member for time not expended and/or services not performed" and "[a] salary in excess of the associated maximum allowable salary...for a staff member or consultant whose position requires certification." *N.J.A.C. 6A:23A-18.5(a)(7)*; *N.J.A.C. 6A:23A-18.5(a)(8)*.

Like all PSSDs, petitioner is required to annually submit to the Department a Fiscal and Program Information Form, as well as audited financial statements. The Department reviews that documentation to, *inter alia*, verify the calculation of the CACPS, ensuring that non-allowable expenses are not included in the tuition rate. Here, upon the Department's request for additional information, petitioner submitted an employment contract and job description for McConagly, which indicated that McConagly was employed as a teacher of "Family and Consumer Sciences-Foods/Nutrition & Food Science," and that she was responsible for implementing various elements of the "Food Service/Culinary Arts Program Curriculum." On

this basis, the Department reasonably concluded that McConagly was a vocational teacher, and disallowed a portion of her salary.

Although petitioner requested an internal appeal on the issue, it submitted no evidence during the appeal process upon which respondent could base a determination to overturn the disallowance. Rather, the only thing offered in support of the appeal was a statement by counsel that, while McConagly's job description listed her as being "partially involved with the school's culinary arts program," she also "taught the Earth science program that year, substituted in any courses that required a substitute during the year, and supervised and ran the testing and curriculum development programs." In the absence of anything more than the bald assertion of counsel, respondent reasonably declined to overturn the disallowance.

The ALJ correctly asserted that, in making disallowances involving job duties, respondent must be guided by the actual job functions of the PSSD employee at issue. It is, however, incumbent upon the PSSD to submit documentation and information that accurately reflects the employee's job functions. It would be inappropriate to place the burden upon respondent to conduct extraneous investigations to determine the accuracy or inaccuracy of the information contained in documentation submitted by a PSSD. Rather, it is reasonable for respondent to expect that a PSSD has submitted accurate documentation for its review, and to rely upon the information contained therein in making its determination.

Furthermore, a determination that is reasonably based upon the documentation submitted by a PSSD is not rendered arbitrary, capricious, or unreasonable by the PSSD's subsequent presentation of contradictory documentary and/or testimonial evidence at an administrative hearing before the Office of Administrative Law. The reasonableness of

respondent's determination must be assessed in light of the evidence before it at the time of its decision.

The Commissioner finds respondent's initial determination, disallowing the portion of McConagly's salary that exceeded the maximum salary permitted for vocational teachers, reasonable in light of the documentation and information petitioner submitted for respondent's desk review. The Commissioner further finds that petitioner failed to submit sufficient information and/or documentation during the internal appeal process to serve as a reasonable basis to overturn the disallowance. Petitioner's *ex post facto* presentation of contradictory evidence at the OAL does nothing to undermine the reasonableness of respondent's determination.

Accordingly, the recommended decision of the OAL, as modified above, is adopted as the final decision in this matter.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 24, 2014

Date of Mailing: April 25, 2014

* 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*).