

#138-14 (OAL Decision: http://njlaw.rutgers.edu/collections/oal/html/initial/edu12541-12_1.html)

PINELANDS LEARNING CENTER, INC., D/B/A, PINELANDS LEARNING CENTER HIGH SCHOOL,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
NEW JERSEY DEPARTMENT OF EDUCATION, DIVISION OF ADMINISTRATION AND FINANCE,	:	
RESPONDENT.	:	

SYNOPSIS

The petitioner, Pinelands Learning Center (PLC) is a private, for-profit institution providing services to students with disabilities. PLC receives tuition from sending public school districts commensurate with its actual cost per pupil, as determined by a certified audit. Pursuant to governing regulations, certain specified items may not be included in the computation of the annual tuition rate for sending districts. The controversy herein involves the respondent Department's disallowance of \$36,498 from PLC's audit for the 2006-2007 school year, reflecting compensation paid to Redonna Bowles (Bowles), a teacher of the handicapped who taught at PLC from September 1, 2006 to April 30, 2007 without a valid New Jersey teaching certificate. Petitioner contended that PLC substantially complied with the certification process, and that the delay in obtaining the required teaching certificate was due to errors on the part of the NJDOE, Office of Licensure and Credentials. Respondent asserted that PLC violated the provisions of N.J.A.C. 6A:23A-18.5 by knowingly employing an uncertified teacher, and failing to take the necessary steps to ensure that Bowles held a certificate prior to the start of the 2006-2007 school year.

The ALJ found, *inter alia*, that: the Department, pursuant to the doctrine of substantial compliance, should not have disallowed Bowles's compensation, as the purpose and intent of the underlying regulations was fulfilled as of September 2005, when her application for certification was perfected; the delay in issuance of the certificate was due to admitted missteps by the NJDOE; PLC is entitled to remedy under the excusable neglect doctrine; equity mandates that PLC be compensated for services it rendered; and the NJDOE conceded that Bowles was eligible to receive her certificate in September 2005, making possession of the certificate by the PLC "largely insignificant and an impermissible obstacle to the PLC receiving payment for services rendered". The ALJ concluded that PLC meets the requirements for relief under the substantial compliance doctrine, and ordered the determination of the NJDOE disallowing Bowles' salary for the period in question reversed.

Upon review, the Commissioner rejected the OAL's Initial Decision, finding, *inter alia*, that PLC did not comply with the mandate of N.J.A.C. 6A:23A-18.4(a)(22) to ensure that Ms. Bowles was properly certified at the start of the 2006-2007 school year; further, the ALJ improperly relied on *Archway Programs, Inc. v. Department of Education, et al.*, – a case with readily distinguishable circumstances – to determine that the doctrine of substantial compliance applied in this case. The Department's disallowance of \$36,498 from PLC's 2006-2007 audit was affirmed.

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.

March 24, 2014

OAL DKT. NO. EDU 12541-12
AGENCY DKT. NO. 220-8/12

PINELANDS LEARNING CENTER, INC., D/B/A, PINELANDS LEARNING CENTER HIGH SCHOOL,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
NEW JERSEY DEPARTMENT OF EDUCATION, DIVISION OF ADMINISTRATION AND FINANCE,	:	
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Department of Education, Division of Administration and Finance (Department), and the Pineland Learning Center, Inc.'s (petitioner) reply thereto.¹ In this matter, petitioner, an approved private school for students with disabilities (private school), challenges the Department's determination that the salary and fringe benefits of Redonna Bowles (Bowles) between September 1, 2006 and April 30, 2007 cannot be included in the school's calculation of the tuition rate for the 2006-2007 school year. The Department did not allow Bowles' salary and fringe benefits because it found that she did not possess the requisite certificate for her teaching position until May 2007. The Administrative Law Judge (ALJ) found that the Department's decision was arbitrary, capricious and unreasonable. The ALJ applied the doctrine of substantial

¹ After the time for filing exceptions expired, the petitioner submitted a "supplemental reply to exceptions" which offered additional proposed evidence, and the Department also filed a response thereto. The regulatory provisions do not permit the filing of a reply to exceptions beyond 5 days after the original exceptions are filed. Further, *N.J.A.C. 1:1-18.4(c)* specifically prohibits the presentation of evidence in exceptions that was not presented at the OAL. Therefore, the supplemental submissions submitted by both parties were not considered by the Commissioner.

compliance to the facts in this case and determined that Bowles' salary and fringe benefits for the entire 2006-2007 school year should be included in the calculation because: Bowles' certificate application was "perfected" in September 2005; the Department of Education, Office of Licensure and Credentials caused delays during the application process; and the purpose of the underlying regulations were fulfilled.

In its exceptions, the Department stresses that a finding by the Department that certain costs are non-allowable in the calculation of the tuition rate cannot be overturned unless it can be characterized as arbitrary, capricious or unreasonable. The Department maintains that pursuant to *N.J.A.C. 6A:23A-18.5(a)(6)* and (10), the salary and fringe benefits of a teacher who does not hold a proper New Jersey teaching certificate for her position is not allowable in the calculation of a private school's per pupil cost. Additionally, the Department emphasizes that it is undisputed that the petitioner was fully aware that Bowles' Teacher of the Handicapped Emergency certificate expired on June 30, 2006, and that she did not possess a standard Teacher of the Handicapped certificate at the beginning of the 2006-2007 school year. Further, pursuant to *N.J.A.C. 6A:23A-18.4(a)(22)*, "[a]n approved private school for students with disabilities shall ensure that school staff ... hold the proper school certification ... to provide the services being rendered." Therefore, the Department maintains that it was the obligation of the petitioner to ensure that Bowles held a Teacher of the Handicapped certificate before the start of the 2006-2007 school year.

The Department also argues that the ALJ erroneously applied the doctrine of substantial compliance to allow the salary and fringe benefits of Ms. Bowles in the calculation of the tuition rate. The Department contends that the ALJ wrongfully relied on *Archway Programs, Inc. v. Department of Education, et al.*, OAL Dkt. No. EDU 6956-00 (decided

September 2, 2008), Adopted, Comm'r (December 4, 2008). Additionally, the Department reiterated the arguments advanced below contending that the petitioner did not satisfy the requirements necessary for the application of the doctrine of substantial compliance. Therefore, the Department requests that the Initial Decision be rejected.

In reply, the petitioner reaffirmed its position at the OAL, arguing that – when the case law is examined, along with the conduct of the Office of Licensure and Credentials – the ALJ correctly concluded that the doctrine of substantial compliance should be applied to allow the full 2006-2007 salary and fringe benefits of Ms. Bowles. Specifically, the petitioner maintains that there is no prejudicial effect to the Department or the sending districts because the students were properly educated by a qualified, and what should have been formulaically-certified teacher; the petitioner took steps to comply with the statute; the purposes of the statute were achieved because there is no dispute that Bowles was qualified, but rather when the qualification was clerically recognized by the Department; and because of the Department's clerical errors, there was a reasonable explanation as to why strict compliance was not achieved. Therefore, the petitioner requests that the Initial Decision be adopted as the final decision in this matter.

Upon a review of the record, the Commissioner finds that the Department's decision disallowing the salary and fringe benefits of Ms. Bowles between September 1, 2006 and April 30, 2007 in the calculation of the petitioner's tuition rate for the 2006-2007 school year was not arbitrary, capricious or unreasonable. Additionally, the Commissioner finds that the ALJ erroneously applied the equitable doctrine of substantial compliance in this case.²

² For the reasons discussed below, the Commissioner also rejects the ALJ's conclusion that the petitioner is entitled to relief in this case under the excusable neglect standard. Similarly, the Commissioner does not find that the petitioner is entitled to submit a quantum meruit claim.

The applicable regulatory provisions establish an intricate formula for the calculation of the tuition rate that can be charged to sending districts by private schools. *N.J.A.C.* 6A:23A-18.1-18.16. The regulations specifically identify certain costs that are not allowable in the calculation, including the salary and fringe benefits of a teacher who is not certified but is functioning in a position requiring certification. *N.J.A.C.* 6A:23A-18.5(a)6 and 10. Additionally, pursuant to *N.J.A.C.* 6A:23A-18.4(a)(22), “[a]n approved private school for students with disabilities shall ensure that school staff … hold the proper school certification … to provide the services being rendered.”

Since it is undisputed that Ms. Bowles did not hold a Teacher of the Handicapped certificate when the 2006-2007 school year commenced³, it is necessary to determine whether the petitioner established that the doctrine of substantial compliance should be applied to excuse the petitioner’s noncompliance with the applicable regulatory provisions. The following factors must be considered when determining the applicability of the doctrine of substantial compliance: “(1) lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of petitioner’s claim; and (5) a reasonable explanation why there was not strict compliance with the statute.” *Judith Berstein v. Board of Trustees*, 151 N.J. Super. 71, 76-77 (App. Div. 1977) (citations omitted). The purpose of the doctrine “is to avoid the harsh consequences that flow from technically inadequate actions that nonetheless meet a statute’s underlying purpose.” *Simone Galik, et al. v. Clara Mass Medical Center A Hospital Corporation, et al.*, 167 N.J. 341, 352 (2001) (citations omitted).

³ Pursuant to the amended regulations, Teacher of the Handicapped Emergency certificates were no longer issued after the 2005-2006 school year, and individuals that were teaching in the field of special education under an emergency certificate could only do so until August 31, 2006. See, *N.J.A.C.* 6A:9-6.3 and *N.J.A.C.* 6A:9-11.3.

Upon review of the *Bernstein* factors, the Commissioner finds that the petitioner did not establish that it had taken any steps to ensure that Ms. Bowles had a Teacher of the Handicapped certificate at the start of the 2006-2007 school year. In the joint statement of facts submitted by the parties, the petitioner states that it was aware that Bowles' Teacher of the Handicapped Emergency certificate expired on June 30, 2006, and that it was also aware that she did not have a standard Teacher of the Handicapped certificate at the beginning of the 2006-2007 school year.

Under the regulations that govern the calculation of the tuition rate, it is the petitioner's obligation to ensure that Ms. Bowles held the proper certificate, not Bowles. As such, any steps that Bowles took during the certificate application process do not equate to steps taken by the petitioner for purposes of determining whether the doctrine of substantial compliance should apply, nor does it negate the general obligation on the part of the petitioner to ensure its teachers actually hold the proper certificates. *N.J.A.C. 6A:23A-18.1-18.16*. Notably, the petitioner did take steps to ensure that Bowles had a Teacher of the Handicapped Emergency certificate for the 2005-2006 school year. Thus, it is contradictory for the petitioner to also suggest that it had a reasonable explanation for failing to ensure that she likewise possessed a certificate at the beginning of the 2006-2007 school year.

Although the ALJ recognized the petitioner's obligation to ensure that Ms. Bowles held the proper certificate, he erroneously concluded that the underlying goals of the regulations were not compromised. The ALJ found it compelling that Bowles had essentially completed her application for a Teacher of the Handicapped certificate in September 2005, and since she eventually was issued the certificate, he concluded that neither the students nor the sending districts suffered any harm. However, by alleviating the regulatory obligation of private

schools to demand that the teachers hold the requisite certificates, the purpose of the provisions are undoubtedly affected. Regardless of whether, as petitioner argues, Bowles was eligible for a certificate and there were delays in processing her application, the fact remains that – in September 2006 – Ms. Bowles did not hold a certificate, and the petitioner had no way of knowing whether or not she would in fact be subsequently issued a certificate. Further, when a private school submits information during an audit, it is not the burden of the Division of Administration and Finance to conduct extraneous investigations to determine if a teacher is a candidate for certain certificates, but instead it is reasonable for the Division of Administration and Finance to simply check to see if a teacher possesses a certificate or not. The regulations require the school to ensure that the teachers have a certificate, not anticipate that a certificate will be issued in the future. *N.J.A.C.* 6A:23A-18.4(a)(22).

The Commissioner also finds that the ALJ improperly relied on *Archway*, *supra*, in determining that the doctrine of substantial compliance should be applied to this case. The circumstances under which the doctrine of substantial compliance was applied in *Archway*, *supra*, are readily distinguishable from this case. Significantly, the salaries in dispute in *Archway*, *supra*, were those for the 1998-1999 school year when the regulations governing emergency certificates were different, and during a time when there was a general shortage of special education teachers in New Jersey. The regulations in place at the time of the dispute in *Archway*, *supra*, (*N.J.A.C.* 6:11-4.3(b)) did not permit the filing of an application for an emergency certificate until August 1 for the next school year. *Archway*, *supra*, EDU 6956-00 at 66-67. In *Archway*, *supra*, the school had to hire staff to fill vacancies in July or during the school year if there was an unexpected vacancy in order to make sure that it had teachers who could comply with the students' Individualized Educational Programs (IEP). *Id.* Significantly,

in *Archway, supra*, the school had in fact taken steps to comply with the regulations by submitting an application for an emergency certificate for each of the teachers in question. *Id.* In this case, the petitioner took no action at the start of the 2006-2007 school year to ensure that Bowles held the requisite certificate. Additionally, there has been no evidence presented in this case showing that the petitioner was forced to employ Ms. Bowles to comply with the students' IEPs. As such, the application of the doctrine of substantial compliance in *Archway, supra*, does not dictate a similar result under the circumstances in this matter.

Accordingly, the Initial Decision of the OAL is rejected; and the Department's decision disallowing the inclusion of the salary and fringe benefits of Redonna Bowles – for the period between September 1, 2006 and April 30, 2007 – in the school's calculation of the tuition rate for the 2006-2007 school year is hereby affirmed.

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2014

Date of Mailing: March 25, 2014

⁴ 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).