

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

Petitioning private school, which receives special education placements from public school districts, appealed the Department's determination to disallow the cost of seventy days during the 2003-2004 school year when Titusville Academy did not provide the minimum four hours of instruction required to qualify the day as a full-day program and thus eligible for tuition payments under *N.J.A.C.* 6A:23-4.1 to 4.16. The Department argued that the determination to disallow \$66,000 from the school's tuition reimbursement was not arbitrary, capricious or unreasonable, and should be upheld.

The ALJ found that in the 2003-2004 school year, petitioner failed to provide the mandated four hours of instruction required to support tuition reimbursement, and concluded that the Department properly determined that Titusville Academy had non-allowable expenses due to its failure to provide the mandated four hours of instructional time on Wednesdays when half-day sessions were held and on other designated half-days. Accordingly, the ALJ determined that \$66,000 constitutes the non-allowable cost expense related to this failure

The Commissioner concurred with the ALJ's analysis and conclusions; adopted the Initial Decision of the OAL for the reasons clearly stated therein; and dismissed the instant petition.

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 6, 2007

OAL DKT. NO. EDU 651-06
AGENCY DKT. NO. 36-1/06

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

Petitioner’s exceptions essentially recast and reiterate its arguments advanced below. In that the Commissioner finds that these were considered and addressed in the Administrative Law Judge’s decision, they will not be revisited herein.

Upon full and independent review of the record, which included transcripts of the hearing held at the OAL on March 30, 2007, the Commissioner – according due deference to the Administrative Law Judge’s (ALJ) credibility determinations¹ – concurs with his conclusion that Titusville Academy failed to sustain its burden of establishing that the Department’s determination regarding 70 days during the 2003-04 school year when the school did not provide

¹ 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). The record before the Commissioner provides no cause for modification or rejection in this regard.

the minimum 4 hours of instruction required to qualify the day as a full-day program, and thus eligible for tuition payments pursuant to *N.J.A.C.* 6A:23-4.1 to 4.16, was arbitrary, capricious or unreasonable. Consequently, the Department's \$66,000 non-allowable expense charge for this failure is sustained.

Accordingly, the recommended decision of the OAL is adopted for the reasons clearly stated therein and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: July 6, 2007

Date of Mailing: July 6, 2007

² 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.*