

#90-12 (OAL Decision: Not yet available online)

ARCHWAY PROGRAMS, INC. :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
NEW JERSEY STATE DEPARTMENT : INITIAL DECISION  
OF EDUCATION, :  
RESPONDENT. :  
\_\_\_\_\_ :

### SYNOPSIS

The controversy herein involves five audits conducted by the respondent Department on Archway's accounts for the school years from 1994-95 through 1998-99, in which the Department disallowed approximately \$9 million in non-allowable costs and expenses and ordered these tuition overcharges returned to the sending districts. Archway appealed this conclusion.

The Office of Administrative Law (OAL) has to date issued three Initial Decisions in this case. In September 2008, the ALJ made recommendations regarding resolution of legal issues in connection with the five audits, but sent the case back to the Commissioner for computation and presentation of final calculations as to the disallowances; the Commissioner adopted the ALJ's recommendations regarding resolution of legal issues, but remanded the case back to the OAL with a directive for the ALJ to make the necessary calculations. On remand, the ALJ determined that it was appropriate to initially resolve only the first audit year as it will have a carryover effect on the remaining audits, and issued a Partial Initial Decision ordering Archway to reimburse the sending districts the amount of their overpayments for the 1994-95 school year. The Commissioner adopted the decision, ordered Archway to return a total of \$2,315,855.51 to the sending districts, and returned the matter to the OAL in order to make the requisite calculations and recommended determination of monies due and owing for the remaining audit years. Archway appealed this decision to the Appellate Division of the Superior Court, which determined that – as all claims as to all parties in this consolidated action had yet to be resolved – Archway's appeal as a final agency determination was premature. In February 2011, the ALJ issued a second Partial Initial Decision, which addresses the amount of monies due and owing by Archway for the 1995-96, 1996-97 and 1997-98 school years, but left unresolved the amount due and owing for the 1998-99 school year. The Commissioner declined to review the second Partial Initial Decision, returned the matter to the OAL for resolution of the issues surrounding the last remaining audit year and for issuance of a final decision, and requested that the ALJ clearly present, in the final Initial Decision, the exact calculated monetary figure due and owing by Archway for each of the five audit years. The ALJ transmitted her proposed final decision in this matter on December 15, 2011, which did not include the aforementioned calculations for the five audit years.

The Commissioner determined that he must reject the ALJ's proposed final decision and remand the matter once again to the OAL for revision commensurate with his prior requests for the initial decision to include clear final monetary figures due and owing by Archway for each of the five audit years. In so determining, the Commissioner noted that the Administrative Procedures Act requires that a recommended decision be filed "in such form that it may be adopted as the decision in the case." *N.J.S.A. 52:14B-10(c)*.

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 14, 2012

OAL DKT. NO. EDU 10474-08  
(OAL DKT. NOS. EDU 6956-00, EDU 8646-00, EDU 4834-01, AND EDU 4607-03)  
(ON REMAND)  
AGENCY DKT. NOS. 271-7/00, 381-10/00, 227-8/99, AND 392-12/02  
**(CONSOLIDATED)**

ARCHWAY PROGRAMS, INC. :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
NEW JERSEY STATE DEPARTMENT : INITIAL DECISION  
OF EDUCATION, :  
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The petitioner, Archway Programs (Archway), is a non-profit corporation which operates a private school for the handicapped (PSH) authorized to educate handicapped public school students pursuant to *N.J.S.A. 18A:46-14(g)*, and receives tuition from sending 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 a tuition rate chargeable to the sending districts. The controversy herein involves five audits conducted by the respondent Department of Education (DOE) on Archway's accounts for the school years from 1994-95 through 1998-99, in which the DOE disallowed approximately \$9 million in non-allowable costs and expenses and ordered these tuition overcharges returned to the sending districts. Archway appealed this conclusion. In September 2008, the Administrative Law Judge (ALJ) issued an Initial Decision recommending resolution of a myriad of legal issues concerning methodologies and allowable costs to be utilized in connection with the five contested audits, and further recommended that the Commissioner calculate and present

final mathematical calculations as to disallowances based upon these resolutions. In a final decision dated December 5, 2008, the Commissioner adopted the ALJ's recommendations regarding resolution of the legal issues and methodologies, but rejected the proposal regarding computation and presentation of final mathematical calculations. The Commissioner remanded the matter to the Office of Administrative Law (OAL) for such further proceedings as were necessary to allow the ALJ to conclude these consolidated cases by making the requisite calculations and recommended determination of monies due and owing.

On remand, the ALJ found that it was appropriate to initially resolve only the audit for the 1994-95 school year – and to reserve recommendation on the remaining years – as resolution of this particular audit would have a carryover effect on the remaining later audits, and ordered that the DOE prepare a new audit of the 1994-95 school year. Based on that audit, and the fact that Archway indicated no objections to the mathematical calculations contained therein, the ALJ determined that the revised DOE audit dated June 25, 2010 includes the amount that petitioner is obligated to return to the sending districts, and she issued a Partial Initial Decision ordering Archway to reimburse these districts the amount of their overpayments for the 1994-95 school year.

By decision dated October 28, 2010 (Commissioner Decision #453-10R), the Commissioner adopted the Partial Initial Decision of the OAL as the final decision as to the 1994-95 school year, and ordered Archway to return – within 60 days of that decision – a total of \$2,315,855.51 to the districts which sent students to its PSH during the 1994-95 school year. The matter was returned to the OAL for further action deemed necessary by the ALJ in order to make the requisite calculations and recommended determination of monies due and owing for the remaining audit years. Archway appealed the Commissioner's October 28, 2010 decision to

the Appellate Division of the Superior Court, which determined that – as all claims as to all parties in this consolidated action had yet to be resolved below – Archway’s appeal as a final agency determination was premature.

On February 10, 2011, the Agency received a second Partial Initial Decision from the OAL which purported to resolve the amounts of monies due and owing by Archway for the 1995-96, 1996-97 and 1997-98 school years, leaving yet unresolved monies due and owing for the 1998-99 school year. Exceptions and reply exceptions to that decision were duly filed by Archway and the Department, respectively.

The Commissioner upon review – pursuant to the authority granted him under *N.J.A.C. 1:1-12.5(e)* – declined to review the second Partial Initial Decision of the OAL as he found that immediate review of this decision – which purportedly resolved final calculations for only three of the four remaining audit years, and in light of the prior decision of the Appellate Division – would not serve to avoid unnecessary litigation or expense. The Commissioner, therefore, returned this matter to the OAL for resolution of the issues surrounding the last remaining audit year in this contested case and for issuance of a final Initial Decision in this consolidated matter, reserving review of the ALJ’s February 10, 2011 decision until the end of the contested case. The Commissioner, additionally, again requested that the ALJ’s final Initial Decision in this matter clearly present the exact calculated monetary figure due and owing by Archway for each of the five audit years at issue.

On December 15, 2011, the ALJ transmitted to the Commissioner what she proposes is her final decision in this matter. The Commissioner is constrained to reject this decision without review and to remand this matter to the OAL for revision commensurate with

his prior requests in this regard.<sup>1</sup> Throughout the protracted proceedings in this consolidated matter – starting with the Commissioner’s first decision on December 4, 2008 – the Commissioner has made it abundantly clear that he was requesting the ALJ to make the requisite calculations of monies due and owing to its sending districts by Archway for each of the audit years at issue. Notwithstanding that the ALJ elected to complete this task by a series of decisions covering individual audit years, it has always been contemplated that her final decision in this case would tie such various partial decisions together in a comprehensive decision which conclusively presented the necessary totals for each of the audit years, along with a final total of all monies due. The Commissioner finds that – given the nature of Archway’s petitions of appeal in this matter, and the dictates of the Administrative Procedure Act which require that a recommended decision shall be filed “in such form that it may be adopted as the decision in the case” (*N.J.S.A. 52:14B-10(c)*) – the final decision of the OAL in this regard should result in recommendations which resolve the entire contested case, *i.e.*, the adjudication of the involved rights, entitlements *and obligations* of Archway. Therefore, the Commissioner requests that the ALJ’s final decision in this matter contain in the body of her decision – by presentation, not by way of incorporation through the attachment of charts prepared by others – her recommendation as to the appropriate disallowances to all of the schedules and other adjustments for each of the five audit years at issue; additionally, the Commissioner requests a recommended finding as to the amount of money to be returned by Archway to the sending public school districts for each audit year, along with the recommended final total amount of money due and owing by Archway.

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<sup>1</sup> In light of the Commissioner’s determination here, review of petitioner’s exceptions to the December 15, 2011 decision and respondent’s reply thereto will be deferred until the end of the contested case.

Accordingly, the recommended decision of the OAL is rejected and this matter is hereby remanded to the OAL for revision as indicated in this decision.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 14, 2012

Date of Mailing: March 14, 2012

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<sup>2</sup> 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*).