

Recodified from N.J.A.C. 6A:23-4.5 and amended by R.2009 d.395, effective December 21, 2009.  
 See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).  
 Updated the N.J.A.C. references throughout.  
 Petition for Rulemaking.  
 See: 44 N.J.R. 2966(b).

### Case Notes

Under former regulations (see now N.J.A.C. 6A:23A-18.1 et seq.), the New Jersey Department of Education acted arbitrarily, unreasonably, or improperly when it disallowed certain costs and expenses that a private school for the handicapped included in tuition rates charged to the sending public school districts; other disallowances were proper (adopting in part, rejecting in part, and remanding 2008 N.J. AGEN 812). *Archway Programs, Inc. v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 6956-00, EDU 8646-00, EDU 4834-01, EDU 4607-03, EDU 4608-03 and EDU 427-06 (Consolidated), 2008 N.J. AGEN LEXIS 1095, Final Decision (December 4, 2008).

Staff salary increase of 3% given by a non-profit corporation that operated a private school for the handicapped program was an allowable cost in the computation of tuition charged to sending districts under former regulations (see now N.J.A.C. 6A:23A-18.5, 6A:23A-18.4). The delay in the initiation of the payment of the salary increase did not convert it into a bonus, and the school-year budget contained allocated money for the salary increase (adopting in part, rejecting in part, and remanding 2008 N.J. AGEN 812). *Archway Programs, Inc. v. N.J. Dept. of Educ.*, OAL Dkt. No. EDU 6956-00, EDU 8646-00, EDU 4834-01, EDU 4607-03, EDU 4608-03 and EDU 427-06 (Consolidated), 2008 N.J. AGEN LEXIS 1095, Final Decision (December 4, 2008).

New Jersey Department of Education should not have disallowed salary payments of personnel who worked for a period of time without an emergency certification, in the computation of tuition rates charged by a private school for the handicapped to the sending public school districts. There was a shortage of appropriately certified special education personnel in New Jersey during the time period at issue, and the equitable doctrine of substantial compliance applied; the non-profit corporation operating the school filed for the certificates, lengthy processing delays occurred, and, in each case, the staff person had the necessary qualifications and eventually received the certificate, and the sending public school districts did not suffer any prejudice (decided under former rules) (adopting in part, rejecting in part, and remanding 2008 N.J. AGEN 812). *Archway Programs, Inc. v. N.J. Dept. of Educ.*, OAL Dkt. No. EDU 6956-00, EDU 8646-00, EDU 4834-01, EDU 4607-03, EDU 4608-03 and EDU 427-06 (Consolidated), 2008 N.J. AGEN LEXIS 1095, Final Decision (December 4, 2008).

Initial Decision adopted, which concluded that in order to determine whether salaries of certain individuals are properly considered in establishing tuition rates payable to private schools for students with disabilities, it is necessary to look beyond titles and determine what they actually do; because the duties of an employee whose title was School Business Administrator were more in line with an Executive Director, such salary was allowable in establishing tuition, despite the fact that the individual did not have the certification to make the salary allowable under the titled position (adopting 2007 N.J. AGEN LEXIS 597, as modified). *Youth Consultation Service, Inc. v. N.J. State Dep't of Educ.*, Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Initial Decision adopted, which concluded that in order to determine whether salaries of certain individuals are properly considered in establishing tuition rates payable to private schools for students with disabilities, it is necessary to look beyond titles and determine what they actually do; because the duties of an employee whose title was Assistant School Business Administrator were more in line with an Assistant Director or Business Manager, such salary was allowable in establishing tuition, despite the fact that the titled position was an unrecognized position title (adopting 2007 N.J. AGEN LEXIS 597, as modified). *Youth Consultation Service, Inc. v. N.J. State Dep't of Educ.*, Office of

Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Adopting Initial Decision's conclusion that in the absence of School Psychologist certification, the salaries of two "Mental Health Clinicians" were not allowable in establishing tuition rates payable by sending districts to private schools for students with disabilities, where the job descriptions for the positions suggested a level of service beyond that of a professional counselor and no contrary evidence was presented (adopting 2007 N.J. AGEN LEXIS 597, as modified). *Youth Consultation Service, Inc. v. N.J. State Dep't of Educ.*, Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Adopting Initial Decision's conclusion that in establishing the tuition rate payable to certain private schools for students with disabilities, a "Training Coordinator," charged with authority and responsibility for the continuing direction and guidance of the work of instructional personnel, was a Supervisor, rather than occupying an administrative position; because this individual did not hold a Supervisor's certificate, the individual's salary was properly disallowed (adopting 2007 N.J. AGEN LEXIS 597, as modified). *Youth Consultation Service, Inc. v. N.J. State Dep't of Educ.*, Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Adopting Initial Decision's conclusion that in the absence of proof of proper certifications, the salaries of individuals holding the titles of Director of Speech, Speech Language Specialist, and Substitute Floater Registered Nurse were not allowable in establishing the tuition rate payable to certain private schools for students with disabilities (adopting 2007 N.J. AGEN LEXIS 597, as modified). *Youth Consultation Service, Inc. v. N.J. State Dep't of Educ.*, Office of Fiscal Policy & Planning, OAL Dkt. Nos. EDU 3573-06, 3574-06, 3575-06, 3576-06, 3577-06, 3684-06, 3685-06 and 3686-06, 2007 N.J. AGEN LEXIS 1013, Commissioner's Decision (October 4, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 24) adopted, which concluded that \$8,778 in Social Security Integration Pension Benefits paid by a state-approved private school for learning disabled and handicapped children to its employees during the 2002-03 school year was a non-allowable fringe benefit which had to be excluded from the calculation of the school's certified actual cost per pupil for that period. Due to the social security integration, the pension contributions calculation of four of the school's directors exceeded the same benefit made available to all other full-time employees by 5.7% of their earnings, and did not conform to the requirements of the regulation requiring that an equitable standard of distribution be attainable for all full-time employees in order for a fringe benefit to be considered an allowable cost in the calculation of the actual cost per pupil. *Deron School of New Jersey v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 3367-05, 2007 N.J. AGEN LEXIS 304, Commissioner's Decision (March 7, 2007), aff'd, 2007 N.J. AGEN LEXIS 897, SB No. 9-07 (N.J. State Bd. of Educ. August 1, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 332) adopted, which concluded that the Department of Education properly disallowed merit pay awards from the computation of the approved tuition rates of two private schools for the disabled, because the schools failed to file copies of merit award plans with the Department until after expiration of the fiscal year, thereby depriving the Department of any opportunity to review and approve the payout. *Cerebral Palsy League, Inc. v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 9024-04, 2006 N.J. AGEN LEXIS 670, Commissioner's Decision (June 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 172) adopted, which concluded that both the weight of the evidence and the doctrine of estoppel supported a decision in favor of a private, non-profit school for the disabled, in its appeal from a determination that salaries and benefit costs for nine of the school's teachers were required to be disallowed due to the teachers' alleged failure to obtain emergency certification (decided under former rules). *Search Day Program, Inc. v. N.J. Dep't of*

Educ., OAL Dkt. No. EDU 8569-04, 2006 N.J. AGEN LEXIS 574, Commissioner's Decision (June 2, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 262) adopted, which concluded that, in light of New Jersey boasting a variety of excellent quality theaters, a \$2,635 cost of a student field trip to a Broadway show should be disallowed from the final approved tuition rate for the 2002-03 fiscal year of an approved private school for the disabled; common sense should have alerted the school's administration that, in this era of fiscal restraint and recurring budget crisis, the luxury of sending school children to Broadway plays at public expense is a questionable use of scarce resources. *Forum School v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 3879-05, 2006 N.J. AGEN LEXIS 656, Commissioner's Decision (May 4, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 244) adopted, which determined that the Department of Education appropriately disallowed certain legal fees from the final approved tuition rates of six private schools for the disabled, where the legal fees were incurred for defense against criminal charges and two former directors and the schools were ultimately convicted of theft by deception. In addition, even assuming, arguendo, that the Commissioner had the authority to extend the 30-day timeline prescribed by N.J.A.C. 6A:23-4.2 [now N.J.A.C. 6A:23A-18.2] for the repayment of the monies, public policy and the equities militated against such an action. *Windsor Learning Center, Inc. v. N.J. State Dep't of Educ.*, Office of Compliance, OAL Dkt. Nos. EDU 5983-04, EDU 5984-04, 2006 N.J. AGEN LEXIS 663, Commissioner's Decision (April 6, 2006), aff'd, SB No. 23-06 (N.J. State Bd. of Educ. November 1, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 492) adopted, which concluded that a student luncheon away from school was a "field trip," so that the cost of the luncheon was not an "ordinary living expense" under N.J.A.C. 6A:23-4.5(a)30 [now N.J.A.C. 6A:23A-18.5(a)30]. *Bergen Center for Childhood Dev., Inc. v. N.J. Dep't of Educ.*, OAL Dkt. No. EDU 1807-05, 2005 N.J. AGEN LEXIS 1150, Commissioner's Decision (October 14, 2005).

#### 6A:23A-18.6 Surcharge

(a) For profit-making schools, the school's tuition rate may include an annual surcharge up to 2.5 percent of the private school's allowable actual costs.

(b) For profit-making schools, interest earned in accordance with N.J.A.C. 6A:23A-18.2(h) is an unrestricted revenue and is not part of the school's surcharge computation.

(c) For profit-making schools, the allowable Federal, State and local income tax liability in N.J.A.C. 6A:23A-18.5(a)39 is computed using only the public school placement tuition income and all allowable and non-allowable approved private school for students with disabilities expenses that are allowable tax deductions on the school's Federal, State and local income tax returns.

(d) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or if applicable added to the total allowable costs to determine the certified actual cost per student.

Amended by R.2004 d.322, effective August 16, 2004.  
See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

Designated current text as (a); added (b) and (c).  
Amended by R.2006 d.361, effective October 2, 2006.  
See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).  
Rewrote (c); and added (d).

Recodified from N.J.A.C. 6A:23-4.6 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

In (b) and (c), updated the N.J.A.C. references.

#### 6A:23A-18.7 Public school placement restricted working capital fund

(a) For approved non-profit private schools for students with disabilities, the school's tuition rate may include an amount that will permit the school to establish a public school placement restricted working capital fund of up to 15 percent of the private school's allowable actual costs, for the 2006-2007 through 2007-2008 school year, but the private school shall not include an amount in excess of 2.5 percent of the private school's allowable actual costs per year.

(b) Interest and/or dividends earned from the investment of tuition funds shall be netted against the school's total allowable costs incurred in account numbers classified as undistributed expenditures—business and other support services when calculating the certified actual cost per student.

(c) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or if applicable added the total allowable costs to determine the certified actual cost per student.

(d) Interest earned in accordance with N.J.A.C. 6A:23A-18.2(h) is unrestricted revenue and is not part of the school's public school placement restricted working capital fund computation.

Amended by R.2004 d.322, effective August 16, 2004.

See: 36 N.J.R. 1313(a), 36 N.J.R. 3895(a).

In (a), substituted "that" for "which" following "include and amount" and "the private school shall" for "annually may" following "allowable actual costs, but"; rewrote (b); added (d).

Amended by R.2006 d.361, effective October 2, 2006.

See: 38 N.J.R. 2333(a), 38 N.J.R. 4178(b).

Rewrote (a) and (c).

Recodified from N.J.A.C. 6A:23-4.7 and amended by R.2009 d.395, effective December 21, 2009.

See: 41 N.J.R. 2850(a), 41 N.J.R. 4706(a).

In (d), updated the N.J.A.C. reference.

#### 6A:23A-18.8 Calculation of student attendance

(a) Each approved private school for students with disabilities shall maintain a school register in accordance with N.J.A.C. 6A:32-8, to record all student attendance.

(b) Each approved private school for students with disabilities shall submit to the Commissioner by September 1 verification of the average daily enrollment for the previous school year on forms provided by the Department.

(c) Each approved private school for students with disabilities shall identify private placements in the register.

(d) Each approved private school for students with disabilities shall maintain a separate register by class type.