

BOARD OF EDUCATION OF THE :
BOROUGH OF KEANSBURG, :
MONMOUTH COUNTY, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
NEW JERSEY STATE DEPARTMENT :
OF EDUCATION, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning “Abbott” District appealed the Department’s determination of its 2003-04 preliminary “maintenance budget” and supplemental aid, alleging that the Department’s review was not in accordance with the July 23, 2003 Order of the Supreme Court.

The ALJ found that the rule duly promulgated to implement the Court’s order for “maintenance” controlled in this proceeding, and that the Office of Administrative Law (OAL) lacked jurisdiction to determine its validity. However, the ALJ further found that, within the framework of that rule, the Department did not offer any factual basis for its calculations and did not dispute the documentation and testimony advanced in support of the Board’s claim. The ALJ directed adjustment of supplemental aid.

The Commissioner adopted the ALJ’s decision with respect to OAL jurisdiction and application of the “maintenance” rule, as well as certain adjustments in nondiscretionary costs and IDEA revenues. However, the Commissioner rejected the decision in all other respects, dismissing the Petition of Appeal except to direct modification of the Board’s preliminary maintenance budget and estimated aid calculation to reflect the specified adjustments.

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.

October 20, 2003

OAL DKT. NO. EDU. 4159-03
AGENCY DKT. NO. 200-6/03

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions by the Department of Education (Department) and a reply by the Board of Education (Board) were duly submitted in accordance with the schedule established in response to the Court’s order for expedition, and both were considered by the Commissioner in reaching his determination herein.

As a preliminary matter, the Commissioner concurs with the Administrative Law Judge (ALJ) that hearing of this matter need not have awaited completion of the District’s Comprehensive Annual Financial Report (CAFR), as argued by the Department. Within the appeal framework established by the Court, the Board was clearly entitled to make, prior to the school year in question, the factual and legal record necessary to resolve the substance of its claims, subject to final adjustment of calculations following audit.

The Commissioner also concurs with the ALJ that *N.J.A.C.* 6A:10-1.2, the regulation duly promulgated to implement the Court's July 23, 2003 order, must control in the instant proceeding, and that the OAL does not have jurisdiction to determine its validity, such determination being solely within the purview of the Appellate Division of the Supreme Court. R. 2:2-3(a); *see, also, Pascucci v. Vagott*, 71 *N.J.* 40, 51-52 (1976); *Wendling v. N.J. Racing Com'n*, 279 *N.J. Super.* 477, 485 (App. Div. 1995). However, even if the Commissioner were to accept, *arguendo*, the Board's contention that a "choice of law" may be made without passing on the validity of the rule itself, the Commissioner here opines, to the extent that he may do so in an administrative proceeding, that the Department's definition of "maintenance budget," as set forth in *N.J.A.C.* 6A:10-1.2, is entirely consistent with the language and intent of the Court, with no conflict between it and the underlying order.

The Commissioner rejects, however, the ALJ's stance that, within the framework established by *N.J.A.C.* 6A:10-1.2, this matter is appropriately resolved by wholesale acceptance of the Board's claims because the calculations underlying them were explained on record, whereas the Department's purportedly were not. To the contrary, the Commissioner finds that the record does, in fact, reveal the basis for the Department's calculations and, thus, permits more specific determinations as set forth below.

With respect to the Board's claims regarding IDEA revenues and non-discretionary cost adjustments for special education and CPI, the Commissioner finds that the Board's exhibits (P-1, page 2; P-7; and P-8) fully support its proposed revisions to the

Department's calculations, so that the ALJ's recommended adjustments in these areas are adopted as set forth at page 6 of the Initial Decision.¹

However, with respect to the Board's claims regarding its Local Contribution to Special Revenue, Early Childhood Program Aid (ECPA), Demonstrably Effective Program Aid (DEPA) and Early Childhood Plan budgets, the Commissioner cannot agree with the ALJ's adoption of the Board's position. The ALJ finds the Board's "bottom-line" calculations to be fully supported, and, indeed, they are, in the sense that the underlying numbers on which they are based are plainly set forth in testimony and documentation on record. The parties' arguments and exhibits, however, are equally revelatory with regard to the bases for the Department's calculations, showing the disparity between the Department's figures and the Board's, for the areas in dispute, to be attributable to the use of numbers from the approved 2002-03 General Fund Budget and approved Early Childhood Plan in the Department's case, and later numbers, reflecting transfers, alterations and mid-year adjustments, in the Board's. (See Exhibit P-1, page 1; Exhibit P-2, page 3; and Exhibit R-2.) This points not, as found by the ALJ, to unsubstantiated conclusions on the part of the Department, but rather to a fundamental difference in methodology and approach between the Department and the Board.

In the matter on appeal, the Department's underlying task was to determine for preliminary purposes the 2003-04 budget that would enable the District to continue in a "maintenance" mode, that is, to implement in 2003-04 the programs, services and positions provided in 2002-03, and concomitantly to determine the estimated amount of supplemental aid necessary for it to do so. To accomplish its first goal of identifying and determining the cost of providing 2002-03 programs and services so as to

¹ It is noted that the Department does not take exception to these recommendations.

continue them in 2003-04, the Department began with the approved General Fund Budget for 2002-03, deducting the amount provided by local taxation (Contribution to Special Revenue) and adding dedicated State-aided program amounts (ECPA,² DEPA and Distance Learning Network), all as indicated in that budget, to create the total adjusted 2002-03 State program budget; it then made finer adjustments to reflect true spending in key accounts, looking to actual expenditures using the best documentation available in the absence of the CAFR in order to estimate the cost of maintaining programs, services and positions, with reasonable allowance for nondiscretionary cost increases. Had it been necessary to do so, additional adjustments would have been made for items such as nonrecurring expenditures and areas found ineffective or inefficient on review. To project the increase or decrease in costs for Early Childhood Education, the Department compared the 2002-03 approved plan to the 2003-04, then adjusted the base budget for the difference. The end result of this process, fully reflected in the above-noted exhibits, is the Total State Program Maintenance Budget, or the budget preliminarily deemed necessary and sufficient to support programs, services and positions at 2002-03 levels, with the difference between it and 2003-04 budgeted revenues equaling the District's estimated supplemental aid calculation.

In the Commissioner's view, the process used by the Department fully allows for reasonable, fair and consistent preliminary determinations under circumstances where precise calculations must necessarily await the results of the CAFR.³ That

² It is noted that the District's 2002-03 Early Childhood Aid (Line 13300), stated as \$3,582,082, should actually be the same amount as later stated for the approved plan budget (\$3,565,190). (See Exhibits P-1, R-2; Department's Exceptions at 6.)

³ There is absolutely no evidence to support the Board's contention, and the ALJ's speculation, that if the District does not immediately receive the approximately \$800,000 still in dispute, the District's children will be deprived of a thorough and efficient education while CAFR adjustment is pending.

original 2002-03 local revenue amounts and amounts supporting restricted programs, such as the ECPA and DEPA disputed herein, may prove different by the year's end does not, in itself, invalidate the Department's method, which is by its very nature based on reasonable assumptions subject to final adjustment by audit. Similarly appropriate, and reasonably based on the only available "like" components for comparison, is the Department's use of approved 2002-03 and 2003-04 Early Childhood Plans in order to determine the change in district need from one year to the next. As well stated by the Administrative Law Judge in the September 26, 2003 Initial Decision in *Board of Education of the City of Plainfield, Union County, v. New Jersey State Department of Education*, OAL Dkt. No. EDU 5502-03, Agency Dkt. No. 206-6/03:⁴

I have considered the arguments of counsel and must agree with the position espoused by the DOE. (footnote omitted) Although I agree with the District that the consistent use of the DOE's methodology does not in itself make it correct, I do not agree that simply because it does not work to the District's advantage makes it incorrect. The methodology utilized by the Department has been applied to all "Abbott Districts" uniformly and has served to increase maintenance budgets in over half of the Districts. The District has not established that the use of this methodology is *per se* improper, illegal, inconsistent with the New Jersey Supreme Court's Order of July 23, 2003 or violative of any of its constitutional rights. The DOE is obligated only to use an approach that is reasonable and uniformly applied. Here they have done so. If the methodology is to be changed in each area in which an Abbott District is not advantaged, there will be no uniformity or equity to the provision of Abbott funds. Thus, I reject the District's argument and **CONCLUDE** that the DOE's methodology is reasonable and will not be second-guessed. (*Id.* at 8)

In holding thus, the Commissioner is also mindful that, to the extent that the results of the Department's reasonable approach may be imperfect, even after adjustment following audit, *N.J.A.C.* 6A: 10-3.1(g) provides a mechanism for the District to obtain additional supplemental funding where unanticipated expenditures or

⁴ Final Commissioner decision issued on October 20, 2003.

unforeseen circumstances warrant. The Commissioner, therefore, wholly endorses the Department's methodology, subject to the correctness of its application based on the evidence presented in any particular instance, as occurred herein with respect to special education, CPI and IDEA calculations.

Accordingly, for the reasons set forth above, the Initial Decision of the OAL is adopted insofar as it concludes that the present matter was appropriately heard prior to audit, that the OAL lacks jurisdiction to determine the validity of the rule promulgated to implement the order of the Court, and that specified adjustments to nondiscretionary costs and IDEA revenue are warranted. However, it is rejected in all other respects, so that the Petition of Appeal is dismissed except insofar as the Board's preliminary maintenance budget, and its concomitant aid calculation, are to be modified to reflect the adjustments ordered herein.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2003

Date of Mailing: N/A

⁵ Pursuant to *P.L. 2003, c. 122*, "Abbott" determinations are final agency actions appealable directly to the Appellate Division of the New Jersey Superior Court.