

BOARD OF EDUCATION OF THE :
CITY OF ELIZABETH, UNION :
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,” 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 duly promulgated rule implementing the Court’s order for “maintenance” controlled in this proceeding, and that the Office of Administrative Law lacked jurisdiction to determine its validity.

The Commissioner concurred with the ALJ’s findings and conclusions, adopted the Initial Decision for the reasons expressed therein and dismissed the District’s 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.

October 20, 2003

OAL DKT. NO. EDU 5493-03
AGENCY DKT. NO. 205-6/03

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The record of this local “Abbott” District’s appeal of the Department’s decision on its supplemental funding request for the 2003-2004 school year, and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The District’s exceptions and the Department’s reply thereto were duly submitted in accordance with the schedule established in response to the Court’s order for expedition and were considered by the Commissioner in reaching this decision.

Upon careful and independent review of the record and the District’s exceptions, the Commissioner concurs with the Administrative Law Judge (ALJ), that the District’s challenge to the definition of “maintenance budget” in *N.J.A.C. 6A:10-1.2* is a facial challenge to the regulation and that the OAL does not have jurisdiction to determine directly or indirectly the validity of *N.J.A.C. 6A:10-1.2*, as such determination is solely within the jurisdictional purview of the Appellate Division or 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). Moreover, even if it were to be assumed, *arguendo*, that the OAL has jurisdiction to determine “a choice of law” as argued by the District, the Commissioner finds that the Department’s definition of “maintenance budget,” as detailed in *N.J.A.C. 6A:10-1.2*, does not differ in any appreciable way from the Supreme Court’s definition of that term contained in its Budget Order of July 23, 2003. Consequently, the Department’s application of such regulatory definition in its review and approval of the District’s 2003-2004 budget is wholly appropriate.¹

Accordingly, the Initial Decision is adopted for the reasons expressed therein. The District’s petition is, therefore, dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2003

Date of Mailing: N/A

¹ In that counsel for petitioner notified Judge Hayden by letter of September 16, 2003 that the District “does not contest any of the specific maintenance budget calculations of the Department of Education in the August 27, 2003 letter,” the validity of the definition of the “maintenance budget” set forth in *N.J.A.C. 6A:10-1.2* is the only remaining issue in this matter.

² 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.