

BOARD OF EDUCATION OF	:	
THE CITY OF MILLVILLE,	:	
CUMBERLAND COUNTY,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
NEW JERSEY STATE DEPARTMENT	:	
OF EDUCATION,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioning “Abbott” Board of Education claimed the Department was required to provide full State funding for its 2003-04 early childhood education program. The Department had provided Early Childhood Program Aid (ECPA) and Preschool Expansion Aid (PSEA) in accordance with prescribed formulas, but the district contended that the State was required to fully fund the difference between the total of these aids and the approved preschool budget.

The ALJ concluded, by reference to Initial Decisions in similar matters involving the Phillipsburg and Pemberton school districts, that the Department correctly calculated the district’s formula aids, but that Court, Department and legislative pronouncements, taken together, require that the district’s preschool plan be funded entirely by the State, subject to legislative appropriations.

The Commissioner concurred that formula aids were correctly calculated, but rejected the conclusion that full State funding of preschool program was required regardless of other funds available in the district budget. The Commissioner held that the State’s obligation is to ensure that sufficient funds are available to fully support the district’s approved early childhood education plan, with additional State aid to be provided where formula aids and local resources are together inadequate for this purpose. Petition was dismissed.

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.

OAL DKT. NO. EDU 379-03
AGENCY DKT. NO. 44-2/03

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Exceptions were filed by the Department of Education (Department), as were replies by the Board of Education (Board), in accordance with the provisions of *N.J.A.C.* 1:1-18.4.

In its exceptions, the Department urges the Commissioner to limit his adoption of the Initial Decision to finding that the Department correctly calculated the amount of the Board’s Preschool Expansion Aid (PSEA) for the 2003-04 fiscal year, and to reject Administrative Law Judge (ALJ) Holmes’ addressing of broader issues. The Department contends that the determination under appeal neither “calculates nor advises [the Board] of the amount of Additional *Abbott v. Burke* State aid that it will receive” so that any assertion by the Board regarding such aid is “entirely inappropriate” in the present proceeding. (Department’s Exceptions at 1-3, quotation at 2)

The Department further contends that the ALJ erred in relying, by reference to the Initial Decisions in the related matters of *Board of Education of the*

Township of Phillipsburg, Warren County, v. New Jersey State Department of Education, Agency Dkt. No. 104-3/03, OAL Dkt. No. 3423-03, and *Board of Education of the Township of Pemberton, Burlington County, v. New Jersey State Department of Education*, Agency Dkt. No. 106-3/03, OAL Dkt. No. EDU 2203-03,¹ on the Governor's Budget Message for FY '04 to conclude that the Board's approved Early Childhood Plan must be fully funded with State aid. The FY '04 Appropriations Act adopted by the Legislature and signed by the Governor as *P.L. 2003, c.122*, the Department notes, expressly revised the earlier Governor's Budget Message language. Specifically:

Notably, the Governor's Budget Message for FY04 provided: "The amount appropriated hereinabove for Additional *Abbott v. Burke* State Aid will provide additional resources to 'Abbott districts' to meet the State's obligation to fully fund parity and *the approved early childhood operational plans*." (Emphasis added). The FY04 Appropriations Act provides: "The amount appropriated hereinabove for Additional *Abbott v. Burke* State Aid will provide additional resources to 'Abbott districts' to meet the State's obligation to fully fund parity *and approved 'Abbott' preschool expansion*." *L. 2003, c. 122*.

Here, the Legislature revised the language contained in the Governor's Budget Message to clarify that, contrary to Judge Holmes' interpretation, the Department is not required to ensure that Millville's approved Early Childhood Plan is fully funded with State aid. By purposefully deleting the words "early childhood operational plans" from the Governor's Budget Message and replacing those words in the FY04 Act with "'Abbott' preschool expansion," the FY04 Act unequivocally demonstrates that, while the Department must ensure that Millville's "approved 'Abbott' expansion" is fully funded with State aid, the Department is not required to ensure that Millville's approved "early childhood operational plan" is fully funded with State aid. Moreover, this revision is consistent with the method, established in the FY04 Act, by which Preschool Expansion Aid is calculated: "funding the increase in the approved budgeted costs from 2001-2002 to 2003-2004 for the projected expansion of preschool programs in "Abbott districts." *L. 2003, c. 122*. (*Id.* at 4-5)

¹ Both matters have been subsequently decided by the Commissioner as indicated below.

This interpretation, the Department avers, is consistent with the Court's language concerning Additional *Abbott v. Burke* Aid. The Department argues:

In *Abbott v. Burke*, 153 N.J. 480 (1998), the Supreme Court opined, "the Commissioner may, before seeking new appropriations, first determine whether funds within an existing school budget are sufficient to meet a school's request for a demonstrably needed supplemental program." *Id.* at 518. The Court further opined, "[u]nderlying the Commissioner's proposal for whole-school reform, early childhood programs and supplemental programs, is the clear commitment that *if there is a need for additional funds*, the needed funds will be provided or secured." *Ibid.* (emphasis added).

The above-quoted language demonstrates that the Supreme Court intended for the Commissioner to ensure that the early childhood programs are fully funded, however, the Commissioner could first determine whether funds within an existing school budget are sufficient to meet a school's request for such programs. Because local tax levy is included [in] the budget, the Commissioner can consider those funds as well as other revenue supporting the budget when determining the amount of Additional *Abbott v. Burke* State aid, if any, that a district needs. (*Id.* at 6)

In reply, the Board posits that it is not seeking additional *Abbott v. Burke* State aid as claimed by the Department; rather it is requesting that, in compliance with the *Abbott V* mandate, the Department fully fund the approved early childhood education budget by filling, with funds designated specifically for that purpose, the gap of \$1,763,866 left after payment of formula aids. (Board's Reply at 1-2)

The Board further argues that the Department's attempt to rely on the Legislature's amendment to the Governor's Budget Message cannot be sustained in view of the Court's mandate in *Abbott V*. The Board states:

Abbott V clearly sets forth a mandate to fully fund Early Childhood programs. This mandate should be viewed in the context of earlier *Abbott* decisions where the Supreme Court recognized the existence of municipal overburdens and the lack of an adequate tax base facing many school districts. See *Abbott v. Burke*, 100 N.J. 269, 292-293 (1985) (*Abbott I*) citing *Robinson v. Cahill*, 69 N.J. 449, 465 (1976) which recognized a "lack of an adequate tax base for educational purposes as

indicated by the gross disparities shown in per pupil tax resources.” *See also Abbott v. Burke*, 119 N.J. 287, 355-357 (1990) (*Abbott II*).

Upon a finding that the right of children to a thorough and efficient system of education is a fundamental right guaranteed by the Constitution, the Supreme Court, in *Robinson v. Cahill*, 69 N.J. 133 (1975), found that the Court was a "last-resort guarantor of the Constitution's command." *Id.* at 154. This supported their finding that “when there occurs a legislative transgression of a right guaranteed to a citizen, final decision as to the invalidity of such action must rest exclusively with the courts.” *Id.* at 146-147.

The Supreme [Court] has mandated, with respect to Early Childhood Programs, that when additional funds are needed they should be provided or secured by the Department. *See Abbott V*, 153 N.J. at 518. Accordingly, the Department’s argument that legislative interpretation can circumvent the Supreme Court’s Constitutional interpretation is without merit. (*Id.* at 2-3)

In addition to the arguments above, the Board further references the arguments of the petitioning boards in the related matters of *Board of Education of the Township of Phillipsburg, supra*, and *Board of Education of the Township of Pemberton, supra*. Briefly, those arguments contend that the instant matter is not limited strictly to the question of whether the Department correctly calculated the amount of PSEA due the district for 2003-04 and that deferral of the broader underlying issue would not serve the public interest; that the Supreme Court’s decision in *Abbott V, supra*, nowhere intimates that preschool programs should or could be funded in part by local tax share; that Department communications pertaining to the 2003-04 school year repeatedly referenced “full funding” of early childhood education programs; and that the Department errs in claiming that the language of the Appropriations Act as adopted by the Legislature supports its position because the Act still links Additional *Abbott v. Burke* State Aid to the State’s obligation to fully fund parity and approved *Abbott* preschool expansion.

Upon his own review and consideration, as in the matter of *Board of Education of the Town of Phillipsburg, supra*, and *Board of Education of the Township of Pemberton, supra*, both decided on September 25, 2003, subsequent to issuance of the Initial Decision herein,² the Commissioner first concurs with the ALJ and the Board that the instant matter is not limited strictly to the question of whether the Department correctly calculated the amount of PSEA due the district for 2003-04. Rather, the Commissioner finds it in the best interest of both the parties in this matter and Abbott districts generally to decide the broader question of whether Court, legislative and Department pronouncements, alone or in combination, require that the entire cost of approved Abbott preschool programs be funded, dollar for dollar, exclusively by the State.

The ALJ, through reference to the Initial Decisions in *Phillipsburg, supra*, and *Pemberton, supra*, answers this question in the affirmative based on legislative intent as expressed through the Governor's FY '04 Budget Message, read in light of 1) Court language recognizing preschool as a critical component of Abbott reform efforts although not a constitutional mandate and acknowledging the statutory endorsement of the link between preschool and later educational achievement; 2) prior enactments reflecting the Legislature's concern with fully funded early childhood education in Abbott districts; and 3) Department pronouncements expressing clear commitment to full funding of preschool programs.

The Commissioner, however, does not concur with this analysis. With respect to the requirements of the Court, nowhere in the *Abbott* decisions is there a

² See also *Board of Education of the Township of Neptune, Monmouth County, v. New Jersey State Department of Education*, similarly decided on September 25, 2003.

suggestion, let alone a directive, that approved Abbott preschool programs must be funded *exclusively* by the State. *Phillipsburg* and *Pemberton*, as well as the Board herein, cite to the Court’s concern with municipal overburden and Abbott districts’ inadequate tax bases and to its language referencing the State’s clear commitment that if there is a need for additional funds, the needed funds will be provided or secured. (*Phillipsburg* Initial Decision at 5, *Pemberton* Initial Decision at 5, Board’s Reply at 3)

By reference, the Board additionally argues implicit endorsement of its position by the Court’s silence in response to Judge King’s statement that preschool would be funded by ECPA, T&E, parity funds and “the incremental State funding needed to fully fund the preschool program,” with no mention of local revenues. (*Phillipsburg* Reply Exceptions at 8-9) These statements, however, do not even on their face require State funding regardless of need. Rather, they provide for the State to ensure, with additional aid if necessary, that sufficient funds are available to the district to fully fund its preschool program, that is, to ensure that any gap remaining after receipt of statutory formula aids will be addressed by the State *to the extent that need exists* because funds otherwise available to the district are insufficient to fully support the approved program. This reading is consonant not only with the Court’s actual language and concern with local taxation capabilities, but also with its overall recognition that, while adequate funding is critical to achievement of a thorough and efficient system of public education in Abbott districts, such funding is a shared responsibility between the State and the local district.

Taken within the proper framework, then, as in *Phillipsburg* and *Pemberton*, the proffered Department pronouncements regarding “full funding” of Abbott preschool programs cannot be viewed as promises or expectations of dollar-for-dollar

State funding regardless of resources available in the local district budget. Rather, they must be understood as reflections of the Department's commitment, and recognition of its obligation, to provide or secure additional State funds to the full degree necessary to support approved programs where local budgetary resources, including formula aids, local levies and monies realized through economies, efficiencies and reallocations, are found inadequate for this purpose. Indeed, this is the only interpretation consistent with sound educational policy, which must recognize *both* the critical importance of ensuring that approved Abbott preschool programs are supported by sufficient funds *and* the necessity to allocate State and local resources as efficiently and effectively as possible in meeting the shared responsibility for education in Abbott districts.

Finally, as in *Phillipsburg* and *Pemberton*, the Commissioner notes that the Legislature has spoken definitively on the central question posed by this appeal. Even granting, *arguendo*, that prior Legislatures provided for full State funding of Abbott district early childhood operational plans during the first years of their development, and that the Governor's Budget Message for FY '04 appeared to continue that pattern, the current Legislature has acted deliberately and decisively to clarify that its intent for the FY '04 budget year is to provide additional funding for *only* those costs directly associated with approved program expansion, not for the entire early childhood operational plan. In that regard, it is noted that there is no question, nor does the Board except to the ALJ's conclusion, that the Department correctly calculated the district's PSEA in accordance with the prescribed legislative formula. Nor does the Commissioner agree, as set forth above, with the Board's contention that the Court has mandated exclusive State funding of early childhood education in Abbott districts; thus, the

Commissioner is not persuaded by the Board's argument that legislative interpretation cannot circumvent the requirements of the Court.

Accordingly, for the reasons set forth above, the Initial Decision of the Office of Administrative Law is rejected except insofar as it concludes that the Department correctly calculated petitioner's ECPA and PSEA for 2003-04. The Petition of Appeal, therefore, is dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: September 25, 2003

Date of Mailing: September 26, 2003

³ 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.