

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF BURLINGTON, :  
BURLINGTON COUNTY, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

NEW JERSEY STATE DEPARTMENT :  
OF EDUCATION, :

RESPONDENT. :

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#### 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 District also asserted that the Department inappropriately excluded the District’s encumbrance figure of \$78,890 on the maintenance budget worksheet and that the Department must recalculate the District’s excess surplus based on the District’s revised calculations, until the Comprehensive Annual Financial Report (CAFR) established otherwise. The District also maintained that the Department must issue a revised preliminary maintenance budget and estimated Additional *Abbott v. Burke* State Aid Award based on adjustments to the reserve and fund balances made after the filed June 30, 2003 Board Secretary’s Report.

The ALJ found that the Department appropriately applied the duly promulgated rule implementing the Court’s order for “maintenance,” and determined that any adjustments to the encumbrances and excess fund balance for the 2002-03 budget based on the District’s recalculations and revised information be effectuated within the context of the audit in preparation for the CAFR and the CAFR review.

The Commissioner adopted the Initial Decision, clarifying that the District’s encumbrances were properly excluded as a budget expense for 2002-03 by the Department and concurring that any adjustments to the District’s maintenance budget be made based on the CAFR review.

<p>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.</p>
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October 20, 2003

OAL DKT. NO. EDU 4094-03  
AGENCY DKT. NO. 185-6/03

BOARD OF EDUCATION OF THE :  
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BURLINGTON COUNTY, :  
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NEW JERSEY STATE DEPARTMENT :  
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\_\_\_\_\_ :

The record of this local “Abbott” District’s appeal of the Department of Education’s (Department) 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 Board of Education of the Burlington School District’s (District) 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.

Initially, with respect to the District’s claim in its exceptions that the Administrative Law Judge (ALJ) failed to follow the Supreme Court’s definition of “maintenance budget,” but, instead, used the “inconsistent definition of ‘maintenance budget’ in the Department of Education’s emergency regulations” (District’s Exceptions at 1-2), the Commissioner finds that the Department’s application of the regulatory definition of “maintenance budget” set forth at *N.J.A.C.* 6A:10-1.2 in its review and approval of the District’s 2003-2004 budget, and the ALJ’s utilization of such definition in its consideration of the

District's appeal is entirely appropriate. With respect to this issue, the ALJ in this matter states solely that:

The district also contends that the Department has not properly defined maintenance budget, *N.J.A.C.* 6A:10-1.2, but the district has simply asked, without objection, that this legal issue be preserved for appeal. (Initial Decision at 2)

The ALJ does not, therefore, directly address the appropriateness of applying the Department's "maintenance definition." Upon review of the record in this matter and upon consideration of the arguments set forth by the District in its exceptions, however, the Commissioner finds that neither the OAL nor the Commissioner 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 and the Commissioner have jurisdiction to determine the validity of the regulation, 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.

The remaining issues in this appeal are: 1) whether the Department appropriately excluded the District's encumbrance figure of \$78,890 on the maintenance budget worksheet; 2) whether the Department should recalculate the District's excess surplus based on the District's revised calculations, until the Comprehensive Annual Financial Report (CAFR) establishes otherwise; and 3) whether the Department must issue a revised preliminary maintenance budget

and estimated Additional *Abbott v. Burke* State Aid Award based on adjustments to the reserve and fund balances made after the filed June 30, 2003 Board Secretary's Report.

Turning first to whether the Department appropriately excluded the District's encumbrance figure of \$78,890 on the maintenance budget worksheet, the Commissioner points out that Keith Costello, Budget Manager/Examiner for the Department of Education, Office of Abbott Implementation, testified that, by memo dated September 16, 2003 to all school districts, Assistant Commissioner Richard Rosenberg addressed the procedures to be followed for open purchase orders and encumbrances on the school district's books as of June 30. The September 16, 2003 memo states, in pertinent part:

Open purchase orders at June 30, 200X should be classified into the following two categories for review and reclassification:

1. Category one represents purchase orders for which the goods have been received or the services have been rendered at June 30th that have not been paid. These purchase orders must be expensed in the current audit period, the related encumbrances reversed, and a liability (accounts payable) established. If the invoice has not been received the amount must be estimated. In accordance with GAAP, an expenditure is recorded when goods are received or services are rendered.
2. Category two represents purchase orders which will be honored in the subsequent year. These purchase orders will be rolled over into the next fiscal year and will be shown in the June 30<sup>th</sup> general fund balance sheet as a reserve for encumbrances. Per NCGA Statement 1, paragraph 91 "encumbrances outstanding at year-end represent the estimated amount of the expenditures ultimately to result *if unperformed contracts in process at year-end are completed. Encumbrances outstanding at year-end do not constitute expenditures or liabilities.*" (emphasis in text) (Exhibit R-1, in evidence)

Accordingly, category one purchase orders and the related encumbrances are to be considered 2002-2003 fiscal year expenditures, but category two purchase orders are considered expenditures in the 2003-2004 fiscal year and, thus, are not to be included in the development of a "maintenance budget" for the 2003-2004 school year pursuant to *N.J.A.C. 6A:10-1.2*. The

Commissioner, therefore, concludes that it was entirely appropriate and consistent with Assistant Commissioner Richard Rosenberg's letter of September 16, 2003, *N.J.A.C.* 6A:23-2.2 and *N.J.A.C.* 6A:10-1.2 for the Department to exclude \$78,890 in encumbrances from the District's 2003-2004 maintenance budget. As the Department points out:

Assistant Business Administrator Walsh testified that her encumbrance figure of \$78,890 included items not yet received, services not yet performed, and contract estimates.<sup>1</sup> Also included in the encumbrances is an estimate for the legal cost of the ongoing 2003-2004 budget appeal. Some of these are costs for which the correct 2002-2003 amounts were not yet known as of September 24, 2003, the date of the hearing. Thus, it is appropriate to wait for the annual audit of the encumbrances, consistent with the Department's letter of September 16, 2003 to the auditors and business administrators (R-1), before any adjustments are made to include them as prior year expenditures. (Department's Exceptions at 5-6)

In light of the Assistant Business Administrator's testimony that the encumbrance figure of \$78,890 includes items not yet received or partially received, services not yet performed, and contract estimates, based on the proofs brought to this record, the Commissioner is unable to determine which, if any, of the District's encumbrances totaling \$78,890 have become accounts payable by virtue of the receipt of the encumbered goods or services on or before June 30, 2003 so as to be considered 2002-2003 expenditures. The Commissioner, therefore, concludes that the District's encumbrances were properly excluded as a budget expense for 2002-2003 by the Department, and directs that any adjustments to be made will be based on updated information with respect to the June 30, 2003 encumbrances for the 2002-2003 school budget year in the course of the CAFR review scheduled to begin in November 2003.

Turning to the two remaining questions, whether the Department should recalculate the District's excess surplus based on the District's revised calculations and whether the Department must issue a revised preliminary maintenance budget and estimated Additional

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<sup>1</sup> Assistant School Business Administrator Ingrid Walsh testified that \$40,000 of this amount represented her estimate that an \$80,000 contract was half completed. (Initial Decision at 7)

*Abbott v. Burke* State Aid Award based on adjustments to the reserve and fund balances made after the filed June 30, 2003 Board Secretary's Report, the Commissioner agrees with the ALJ that any adjustments to the District's maintenance budget be made based on the CAFR review. In so determining, the Commissioner points out that any adjustment with respect to a change of encumbrances to accounts payable as a result of the CAFR review, as directed above, will affect the excess surplus figure, the fund balance<sup>2</sup> and the Additional *Abbott v. Burke* State Aid Award. Moreover, the unresolved discrepancy in the District's excess budget surplus figures and the Department's excess budget surplus figures, *i.e.*, the Department's excess surplus figure is \$163,812 higher than the District's calculation, is best resolved within the context of the upcoming CAFR review as the \$78,890 that the District reserved for encumbrances and the difference in the parties' calculation of the 2% of the fund balance (\$440,000 *v.* \$412,942) account for part of this difference, but the District, who has the burden in this matter, failed to adequately explain the additional difference of about \$57,000 or to establish the accuracy of the District's excess surplus figure.

Accordingly, for the reasons expressed therein, the Commissioner adopts the Initial Decision as clarified above.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2003

Date of Mailing: N/A

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<sup>2</sup> In that the Commissioner has determined that the Department properly excluded the District's encumbrances as an expense for 2002-2003 and, thus, the Department's calculation of fund balance remains unchanged, it is unnecessary to address the District's request that "the DOE should be required to disburse immediately the Additional *Abbott v. Burke* State Aid receivable that was eliminated based on the erroneous calculation of fund balance." (District's Exceptions at 21)

<sup>3</sup> 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.