

STATE-OPERATED SCHOOL DISTRICT :  
OF THE CITY OF JERSEY CITY,  
HUDSON 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 challenged the Department’s reduction, as part of its review of noninstructional expenditures for ineffectiveness or inefficiency, of 53 custodial positions.

The ALJ found that the Department appropriately applied the duly promulgated rule implementing the Court’s order for “maintenance.” The ALJ further upheld the Department’s methodology and determination with respect to custodial positions, but suggested that, because the determination was based on older data, it be considered for adjustment based on more current figures.

The Commissioner adopted the ALJ’s decision in most respects, but directed the Department to increase the number of allowed custodial positions based on the District’s current, verified square footage exclusive of certain leased preschool spaces, making, however, no special allowance for “satellite” locations as requested by the District.

<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 5496-03  
AGENCY DKT. NO. 196-6/03

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The District’s exception to the Administrative Law Judge’s (ALJ) recommendation with respect to custodial positions,<sup>1</sup> and the Department’s reply, were duly submitted in accordance with the schedule established in response to the Court’s order for expedition.

Initially, the Commissioner concurs with the ALJ that the Department’s methodology in reviewing the District’s budget fully comports with the “maintenance” standard, as established by the Court and implemented by regulations promulgated in accordance with *P.L. 2003, c. 122*. The Commissioner concurs that the OAL does not have jurisdiction to determine directly or indirectly the validity of *N.J.A.C. 6A:10-1.2*, such determination being 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)*;

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<sup>1</sup> The District reserves its objections to the Department’s definition of “maintenance budget” and “school-based positions,” but concedes that these “will not be resolved in the District’s favor unless and until court action is taken on appeal.” (District’s Exceptions at 1-2)

*Wendling v. N.J. Racing Com'n.*, 279 N.J. Super. 477, 485 (App. Div. 1995). However, to the extent that he may appropriately do so in an administrative proceeding, the Commissioner also opines that the Department's definition of "maintenance budget," as set forth in *N.J.A.C.* 6A:10-1.2, is fully consistent with the language and intent of the Court. Thus, like the ALJ, the Commissioner finds the regulatory definition controlling herein, with no conflict between it and the underlying Court order.

The Commissioner further concurs that the Department used an entirely lawful and reasonable approach in concluding that the District's custodial costs were excessive under standards of inefficiency and ineffectiveness. Notwithstanding that concurrence, however, the Commissioner is also persuaded that some adjustment to the Department's calculation is warranted based on the availability on record (Exhibits P-24 and P-25) of significantly updated and, apparently, undisputed square footage figures. In its exceptions, the District urges the Commissioner to make the adjustment suggested by the ALJ by applying the Department's methodology to current square footage and building configuration figures (Exhibit P-24, page 5), so as to restore 22 of the 53 custodial positions eliminated by the Department for a total budget increase of \$871,706. (District's Exceptions at 3-4) This calculation, however, takes special account of custodians assigned to cover "satellite" locations ("extra sites" in P-24), a circumstance which the District believes to warrant positions over and above those generated by the District's square footage figure. Because the Commissioner does not find adequate support in the record for this contention, he finds, instead, that the appropriate resolution is to have the Department apply its formula to the District's current, verified square footage exclusive of leased preschool space receiving custodial funding through Early Childhood, taking

account of partial positions with the requisite increase in fulltime equivalent positions (FTEs) but with no additional allowance for “satellite” coverage. Based on the information provided in Exhibit P-24, this would appear, subject to the requisite deduction of the aforementioned preschool space and verification of square footage figures, to generate approximately 318 positions, or 20 more than allowed by the Department. Such adjustment, in the Commissioner’s view, should amply enable the District to meet its legitimate custodial needs in accordance with appropriate Department standards of effectiveness and efficiency.<sup>2</sup>

Finally, the Commissioner concurs with, and the District appears to accept, the ALJ’s analysis and conclusion upholding the Department’s exclusion of costs for radon testing, which may be deferred until 2004-05 and scrutinized for greater savings, and for a medical provider, for which the potential need is variable and costs may be absorbed by efficiencies and the increase in the District’s budget attributable to Consumer Price Index (CPI) allowances.<sup>3</sup>

Accordingly, for the reasons expressed herein, the Initial Decision of the Office of Administrative Law is modified with respect to its recommended upholding of the Department’s full reduction in custodial positions, but adopted in all other respects. The Petition of Appeal is dismissed, except as to the Department’s restoration of 20

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<sup>2</sup> In so holding, the Commissioner is unpersuaded by the Department’s Reply submission, which urges the Commissioner to uphold the full amount of the Department’s reduction, reasoning that, regardless of the square footage used, it is clear that the District’s “custodial cost center” reflects inefficiency. (Department’s Reply Exceptions at 1-3) Indeed, the Commissioner notes that his determination herein appears consistent with the position taken by the Department in its Post-hearing Brief at 17.

<sup>3</sup> In this context, the Commissioner also notes the availability of a mechanism for Abbott districts to address needs, arising during the year due to unanticipated expenditures or unforeseen circumstances, for additional resources to implement Department-approved programs and services. *N.J.A.C. 6A:10-3.1(g)*.

custodial positions, subject to preschool adjustment and verification of square footage, as set forth above.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2003

Date of Mailing: N/A

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<sup>4</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.