

BOARD OF EDUCATION OF THE	:	
CITY OF WILDWOOD,	:	
	:	
PETITIONER,	:	COMMISSIONER OF
EDUCATION	:	
V.	:	
	:	DECISION
BOARD OF COMMISSIONERS	:	
OF THE CITY OF WILDWOOD,	:	
CAPE MAY COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	
	:	

SYNOPSIS

Board appealed General Fund tax levy reductions in the amount of \$537,038 made by governing body following voter rejection of proposed budget on April 15, 1997.

Upon review of the appeal herein to determine whether Board demonstrated that restoration of specific line item reductions was necessary in order to provide a thorough and efficient system of education in the district, Commissioner determined to restore \$210,637. However, in view of the fact that additional surplus sufficient to cover this amount is available to the District, the Commissioner let stand the General Fund tax levy of \$5,693,033, as certified by the City for 1997-98 school purposes.

Commissioner permitted Board to exclude its additional State appropriation from consideration herein because of the demonstrated need for the repairs for which the appropriation was expressly made. However, Commissioner further stipulated that any amount of this money not used for the stated purpose is to be appropriated in the 1998-99 budget for tax relief.

December 19, 1997

BOARD OF EDUCATION OF THE	:	
CITY OF WILDWOOD,	:	
	:	
PETITIONER,	:	COMMISSIONER OF
EDUCATION	:	
V.	:	
	:	DECISION
BOARD OF COMMISSIONERS	:	
OF THE CITY OF WILDWOOD,	:	
CAPE MAY COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

For the Board of Education, Bruce M. Gorman, Esq.

For the Board of Commissioners of the City of Wildwood, Marcus H. Karavan, Esq.

PROCEDURAL HISTORY

This matter was opened before the Commissioner of Education on June 13, 1997, through the filing of a Petition of Appeal by the Board of Education of the City of Wildwood (Board), seeking restoration of reductions to the school budget made by the Board of Commissioners of the City of Wildwood (City) pursuant to *N.J.S.A. 18A:22-37* following defeat of the budget at the annual school election on April 15, 1997.

At that election, the voters rejected a public question proposing a General Fund tax levy of \$6,230,071 for the 1997-98 school year. On May 16, 1997, following consultation with the Board as required by law, the Borough adopted a resolution determining to certify a General Fund tax levy of \$5,693,033 as sufficient to provide for a thorough and efficient system of education (T&E) in the district. This amount represented a reduction of \$537,038 from the tax levy proposed by the Board, and was effectuated through cuts in 29 line items, for the reasons given in the schedule attached to the implementing resolution.

The amounts in dispute in this appeal are thus as follows:

Tax Levy Proposed by Board

General Fund \$ 6,230,071

Tax Levy Certified by City

General Fund \$ 5,693,033

Amount of Reduction by City

General Fund \$537,038

Amount of Reduction in Dispute

General Fund \$537,038

An answer to the Board's petition was filed by the City on July 1, 1997. The Board's Position Statement was filed on July 21, 1997 and the City's position statement was submitted on July 22, 1997. On August 4, 1997, the Board filed a response to the City's position statement, and on August 12, 1997, it filed a summation. On August 26, 1997, the City filed its summation statement.¹

In addition, as the parties had been advised by letter from the Assistant Commissioner dated April 16, 1997, distributed through the County Superintendent to boards and municipalities experiencing budget defeats and again in conjunction with proceedings herein, as part of the record of the within appeal, the Commissioner took official notice of the Board's revised budget and its June 30 financial report to be filed by August 1 pursuant to N.J.S.A. 18A:17-10, as well as applicable portions of the School Report Card and the Comparative Spending Guide. That same notice further provided that official notice would be taken of the annual audit for purposes of verifying surplus information given in the June 30 report and any prior year data relied upon by the Commissioner in making his determinations.

Finally, the record of this matter shows that the Board was notified by letter dated July 11, 1997 from the Assistant Commissioner of the Division of Finance that it had received a supplemental appropriation in the amount of \$500,000 in the State Appropriations Act for the fiscal year ending June 30, 1998. The Board was informed how to record said aid in accordance with GAAP principles, and that it was required to take action to revise its 1997-98 budget. The

¹ It is noted that, although the date on the face of the document is August 11, 1997, it was not received by the Department of Education until August 26, 1997.

Board was further informed that the additional school aid would be considered when the instant appeal was decided.²

Consistent with the above, upon receipt of the City's summation on August 26, 1997, the record of the within appeal was closed and the matter proceeded to determination.

STANDARD OF REVIEW

In rendering judgment relative to budgetary appeals, the Commissioner notes that the Constitution of the State of New Jersey requires the Legislature to provide for a thorough and efficient system of education (T&E). The Legislature by way of statutory scheme has delegated the responsibility for providing such T&E to local boards of education. Additionally, the Legislature pursuant to N.J.S.A. 18A:6-9, 22-14, 22-17 and 22-37 has authorized the Commissioner of Education to review and decide appeals by boards of education seeking restoration of budgetary reductions imposed by local governing bodies. In reviewing such appeals, the Commissioner's standard has historically been whether a district board of education has demonstrated that the amount by which a specific line-item reduction imposed by the governing body is necessary for the provision of T&E. Board of Education of East Brunswick Township v. Township Council of East Brunswick, 48 N.J. 94 (1966) and Board of Education of Deptford Township v. Mayor and Council of Deptford Township, 116 N.J. 305 (1989). However, on December 20, 1996, the Legislature enacted the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA), wherein a prescribed level of expenditure range was established as sufficient for provision of T&E. Therein, appeal of General Fund budget amounts in excess of that range, following voter defeat and municipal reduction, was expressly restricted to grounds of negative impact on the stability of the district given the need for long-term planning and budgeting, while appeal of General Fund budget amounts within that range could also be based on necessity for T&E. Additionally, the Act provided for standards of efficiency to be established by the Commissioner, setting forth the appropriate cost of the various

² In its reply position statement filed on August 4, 1997, the Board contends that monies it "****may receive from the State are desperately needed to repair the roof of the high school. The problems with the roof have been outlined in {Disputed line item Number 29, *supra*}. *** The fact that respondent has consistently fought efforts to effectuate these needed repairs by campaigning against Bond Referendum after Bond Referendum only highlights the necessity of using the \$500,000.000 grant to fix the roof." (Board's Reply Statement at p. 26)

programs, services, activities and materials necessary to achieve T&E. (P.L. 1996, c. 138; N.J.S.A. 18A:7F-1 et seq.)

In the present instance, the Board proposed a General Fund budget *within* the T&E range established for the district pursuant to CEIFA. Accordingly, appeal of reductions may be made either on grounds that restoration of such reductions is necessary for T&E, in accordance with established standards of efficiency, or on grounds that the reductions negatively impact upon the stability of the district.

Mindful, then, of the standard to be applied, the Commissioner makes specific determinations as set forth below.

COMMISSIONER'S DETERMINATION

Disputed Line-Item Number 1

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
2540	11-140-100-101	Gr. 9-12 Sal. of Teachers (Athletic Trainer)	\$1,570,672	\$51,555

The Board contends that physical education and athletics are considered an integral part of a thorough and efficient system of education. Elimination of the athletic trainer will, according to the Board, significantly threaten the health and safety of the students participating in the athletic program. The Board refers to *N.J.A.C.* 6:29-3.4, which requires student athletes to be medically cleared for participation in athletics. The Board reasons that the athletic trainer is a necessary part of the process of protecting the health of student athletes, in that the trainer treats injuries for all school athletes, provides whirlpool treatment and supervises training machines. Further, the trainer spends in excess of 1,100 hours per year attending athletic events. The Board argues that, for many students, treatment by the trainer is the only rehabilitation they will receive. In this regard, the Board finds that, to deny the poverty-level students in the district of the basic medical protection that students in wealthier districts enjoy is discriminatory. Thus, the Board concludes that elimination of this position will place student

athletes at risk. The Board also argues that athletes may avoid the risk by ceasing to participate in athletic programs, thereby receiving less than T&E.

The City contends that the trainer position is not essential, and does not affect T&E. The City asserts that the trainer does not affect classroom education, nor the physical education program of the district. Moreover, the City argues that removal of this position does not affect any of the interscholastic activities. This position, the City concludes, is a luxury and not a necessity. Thus, elimination of the athletic trainer position will not, the City avers, harm any of the district's children, nor will it preclude T&E.

Upon review, the Commissioner finds that, while athletic programs may indeed be an integral part of T&E, the district is spending well above the amount established as efficient pursuant to CEIFA for extracurricular/co-curricular activities, and, further, has not demonstrated the necessity for restoration of this specific position in order to provide a T&E level of extra- and co-curricular activity. Accordingly, the reduction of \$51,555 is sustained.

Disputed Line-Item Number 2

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
2680	11-190-100-610	General Supplies	\$133,500	\$3,500

This line item, the Board points out, is not only for copying supplies, as targeted for reduction by the City, but for pencils, workbooks, manila folders, general stationary supplies, chalk, magic markers and other supplies used in the actual teaching process. The Board asserts that the City's assumption that the use of computers will correspond in a reduction in copying charges is faulty. Rather, the Board contends, the use of computers results in an increase in copying costs. The Board asserts that computers generate a great deal of paper, in that computer printouts are generally copied. Teachers copy hand-outs for students, the Board notes, and

students copy projects they have created on the computer. The clerical staff copies correspondence and reports. The business office copies financial records. The Board reasons that these activities relate to providing T&E.

The City notes that the expenditures in 1995-96 from this account were \$125,608. The 1996-97 revised appropriation was \$160,630, and the 1997-98 proposed appropriation is \$133,500. The City argues that its reduction of \$3,500 is minor, and will not affect T&E, and that the reduction may be easily accomplished.

Upon review, the Commissioner finds that the Board is spending within the level of efficiency established pursuant to CEIFA for supplies, and has budgeted less for this year than in the prior year. Moreover, the City has not provided a specific demonstration of the manner in which costs could be reduced to the degree required by its action. Accordingly, the reduction of \$3,500 is restored.

Disputed Line-Item Number 3

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
2670	11-190-100-500	Other Purchased Services (Travel Expenses)	\$6,700	\$3,000

The Board argues that, pursuant to its collective bargaining agreement with the Wildwood Education Association, it is obligated to pay for travel expenses when it authorizes teaching staff members to attend workshops and seminars. The Board asserts that much of the training in this regard is mandated, and the Commissioner has stated that teacher education is a State priority. With the cuts proposed by the City, the Board contends that the ability of teachers to improve their skills and thereby provide a better education to students will be eliminated. In such event, the Board finds that T&E will suffer.

The City asserts that this reduction will not affect T&E. It notes that the 1995-96 expenditures for this account totaled \$6,636; the 1996-97 revised appropriation was \$9,150 and the 1997-98 proposed appropriation is \$6,700. The City finds that this is an “out of classroom reduction” (City’s Position Statement at p. 6) and it will not, therefore, affect the education provided in the district.

Upon review, the Commissioner finds that the Board’s budgeted amount is less than its prior year allocation, and equal to its FY 96 expenditures in this area. In light of the importance of professional development for T&E, as recognized in the efficiency standards established pursuant to CEIFA, and in view of the lack of specificity in the reasoning for the City’s reduction, the Commissioner determines to restore the \$3,000 reduced from this account.

Disputed Line-Item Number 4

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
2640	11-190-100-106	Other Sal. for Instruct. (Aides)	<u>\$55,830</u>	\$10,000

The district employs ten aides which it deems absolutely necessary, and which the City proposes to cut and replace with volunteers. The Board notes the aides are used for a variety of purposes, such as helping teachers with overcrowded classrooms, assisting in the instruction of the developmentally disabled and performing functions which do not require a fully certified teacher.

The Board points out that one of the aides works at the high school, providing one-on-one training with a student afflicted with Down’s Syndrome, and handling a group of marginally retarded students. A volunteer, the Board reasons, would not be qualified to fill this position. The alternative, according to the Board, is to send these students out of the district at much greater cost. The remaining nine aides work at the elementary school: three as full-time

special education aides, two as part-time kindergarten aides, three part-time first-grade aides and one as a full-time library aide. The Board notes that, with the exceptions of the library aide, all aides have direct pupil contact and are intimately involved with providing T&E. Moreover, the Board notes that aides must have qualifications beyond those of a volunteer. It argues that the City's observation that aides are not certified is inaccurate; an aide in Wildwood must have at least a substitute's certificate and must be approved by the County Superintendent of Schools. The Board further notes that, of the \$55,830 in this line item, \$46,217 is paid for by Demonstrably Effective Program Aid. It reasons that aides are utilized to assist in functions which would otherwise have to be performed by teachers, so that a reduction in aides will necessarily mean the addition of more teachers. It is more economical, the Board concludes, to maintain the aides.

The City argues that a \$10,000 reduction for salaries for non-certified education officials does not affect T&E. It notes that aides can be replaced by volunteers, and further asserts that, at present, the aides are not certified.

Upon review, the Commissioner notes that the Board's spending for aides is well within the scope of efficiency established pursuant to CEIFA, and that the City's suggestion that paraprofessionals, who must meet established qualification standards and be approved by the county superintendent, be replaced by volunteers is simply not feasible. Accordingly, the Commissioner restores the reduction of \$10,000.

Disputed Line-Item Number 5

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
2700	11-190-100-800	Other Objects	\$97,529	\$5,000

The Board notes that the City’s reduction in this line item pertains to copying charges; said charges are the usage fee paid to the copier company. For the reasons set forth in Disputed Line Item Number 2, *supra*, the Board expects that its copier will be used more often, and usage will increase. The Board asserts that the items copied by the district either impact directly upon T&E, or upon the administrative stability of the district. The copying charge is a usage fee imposed by the manufacturer. The Board reasons that it can only reduce its expenditures by reducing the services offered to students.

The City contends that this reduction will not affect T&E, and will not impede the educational program in the district. It notes the 1997-98 proposed appropriation, and finds that, even with the reduction, a significant sum remains for the Board’s use.

Upon review, the Commissioner finds that the Board is spending within the level of efficiency established pursuant to CEIFA for supplies, and has budgeted substantially less for this year than in the prior two years. Moreover, the City has not provided a specific demonstration of the manner in which costs could be reduced to the degree required by its action. Accordingly, the reduction of \$5,000 is restored.

Disputed Line-Item Number 6

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
6110	11-402-100-600	Supplies and Materials (Athletics)	\$47,500	\$20,000

The Board urges that the athletic program is an essential part of T&E, as outlined *infra*, in Disputed Line-Item Number 16. The Board notes that its original budget request for this line item was over \$70,000, and that \$47,500 represents the absolute minimum required for it to operate the athletic program. The Board further observes that the City’s suggestion, *infra*, that trainer’s supplies may be eliminated, is premised upon its elimination of the trainer, as addressed

above. Yet, the Board reasons, that even if the trainer is eliminated the supplies will remain necessary, as there will continue to be injured students. As for the reduction in coaches' salaries, the Board argues that their salaries are already so low that now its staff members go to other districts to take coaching positions. Additionally, coaching salaries are a negotiable item; the Board will have to re-open the collective agreement and negotiate with the teacher's association to accommodate this reduction. The Board further points out that it will be limited in its ability to achieve such a reduction, in that the City has also eliminated the Board's labor negotiator, as set forth in Disputed Line-Item Number 13, *infra*.

The Board questions the City's suggestion to reduce miscellaneous expenses, in that it does not provide an indication of what specific expenses are disposable. The Board herein provides a list of the expenses included in this line item and notes that none of the expenditures for a particular sport is large. Rather, the Board observes that its district provides 23 teams in 11 sports for students in grades 5-12. Participation in these activities helps produce a well-rounded student. Reducing this line item by \$20,000 will cripple the athletic programs and lead to the demise of most of the sports identified on the Board's list. Further, the reduction will infringe upon the guaranteed right of each student to T&E.

The City avers that the reduction may be absorbed by reducing trainer supplies, miscellaneous expenses and coaches' salaries, none of which affects classroom activities. The reduction, the City argues, coincides with the reduction in Line Item 2540, the athletic trainer's salary. The reduction does not affect T&E, according to the City.

Upon review, the Commissioner finds that, as noted above, the Board is spending well above efficiency levels established by CEIFA for extra- and co-curricular activities, and that it can, given the size of this account and the elimination of the trainer position above, absorb a

reduction of \$3,500 without negative impact on the district's ability to provide T&E. Accordingly, the Commissioner restores \$16,500 of the City's reduction, and sustains \$3,500.

Disputed Line-Item Number 7

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
6490	11-000-218-104	Salaries of Other Prof. Staff	\$199,245	\$52,000

The Board notes that it has the composition of an inner city urban district, in that approximately 25% of the student population is African American and approximately 24% of the students are Hispanic. Moreover, the population is abnormally transient. The Board argues that it cannot absorb the loss of a guidance counselor's position without seriously affecting T&E. It notes the duties of a guidance counselor are varied,³ and the loss of one of its four guidance staff⁴ will adversely affect the ability of the students to receive proper counseling regarding course selection, career goals and college admissions, matters which are integral to T&E. The Board additionally attaches a Guidance report for the 1996-97 school year which shows that the elementary counselor currently serves over 500 students, a counselor-student ratio which is not acceptable. Further reductions in the guidance staff would diminish guidance services to a level which would render it impossible, asserts the Board, to offer T&E.

The City contends that the reduction of one counselor's position will not affect T&E. It notes that sufficient funds remain in this line item to maintain its program with the remaining guidance professionals in the district. The City further contends that elimination of one

³ The Board lists the following functions of guidance counselors: handling college applications and all other aspects of college admission; scheduling the course load for each student in conjunction with his/her career goals; creating an overall schedule for the school system; meeting with and counseling students with failing grades; counseling students for misbehavior; interfacing with DYFS; assisting and integrating new students in the system; coordinating problems students with the Child Study Team; and structuring the State-mandated Approved Counseling Services Plan.

⁴ The director of guidance, two high school counselors and one elementary counselor.

guidance position does not affect classroom activities, and the needs of the students will be met by the remaining staff.

Upon review, the Commissioner finds that the Board is spending significantly above the range of efficiency established for guidance services pursuant to CEIFA, and that it should be able to provide a sufficient level of services with one less staff member as proposed by the City. Accordingly, the Commissioner sustains the reduction of \$52,000.

Disputed Line-Item Number 8

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
6550	11-000-218-600	Supplies and Materials (Misc. Supp./Student Support Services)	\$13,500	\$5,500

The Board notes that this line-item comprises office supplies used by the administrative staff, including, but not limited to, teaching and computer supplies which are not used by the students. Of the \$5,500 reduction, \$3,500 is from this category. The Board contends that without these supplies, the clerical staff will be unable to function, which will, in turn, eliminate such items as report cards, attendance records, personnel records, student records, teacher lesson plans and the like. These items, asserts the Board, are essential to the functioning of the district. The remaining \$2,000 reduction will eliminate expenditures for the State-mandated standardized testing, including, but not limited to, Metropolitan Achievement Tests. The Board avers that, by virtue of the State mandate, these tests are clearly necessary to prove T&E.

The City argues that this reduction will not affect T&E. It observes that the proposed 1997-98 appropriation was \$13,500, nearly double the amount in last year's budget (\$7,816). Even with the reduction, the City asserts, the Board will be left with \$8,000 in this line item, an increase from the 1996-97 revised appropriation. The City finds that the Board's prior

year's expenses indicate that it has over-budgeted for this line item, and the adjusted number comports with the prior year's expenditures. The City further argues that the Board must contain costs in this area.

Upon review, the Commissioner finds that the Board is spending within the level of efficiency established pursuant to CEIFA for supplies, notwithstanding that this account has increased over last year's appropriation. Moreover, the City has not provided a specific demonstration of the manner in which costs could be reduced to the degree required by its action. Accordingly, the reduction of \$5,500 is restored.

Disputed Line-Item Number 9

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
6560	11-000-218-800	Other Objects (Misc. Supp./ Student Supp. Svcs.)	\$8,000	\$4,000

The Board warrants that the monies in this line item have been budgeted to provide computer equipment and servicing for same. The Board explains that it entered into a lease agreement for 60 computers to be used to teach computer science to all students in both the high school and the elementary school; the line-item increase from the prior year is a direct result of the acquisition of the computers. The computers require equipment and servicing, including, but not limited to, software, wiring, connectors, boards, network maintenance, and general upkeep. All the computers are used for classroom instruction. The Board affirms that, if this line item is reduced, it will be unable to operate this program. Given the great importance of computers in the modern world, the Board contends that they are essential to T&E, and they cannot be cut from the budget, and argues that the Commissioner has previously determined that computers are essential to the provision of T&E.

The City, again, notes that this reduction will not affect T&E. It has reviewed the 1995-96 expenses (\$7,149) in comparison to 1996-97, and finds that the 1997-98 expenses may be reduced, as the reduction will still permit the district an increase over the 1996-97 amount of \$3,427.

Upon review, the Commissioner finds that the Board is spending within the level of efficiency established pursuant to CEIFA for supplies, notwithstanding that this account has increased over last year's appropriation. Moreover, the City has not provided a specific demonstration of the manner in which costs could be reduced to the degree required by its action. Accordingly, the reduction of \$4,000 is restored.

Disputed Line-Item Number 10

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
6580	11-000-219-104	Salaries of Other Prof. Staff ((Sal./Child Study Team)	\$232,255	\$48,544

The Board argues that the City's proposal to eliminate one member of the Child Study Team (CST) is impossible, as a matter of law. The Board cites *N.J.A.C. 6:28-1.1(f)*, which requires that each local board maintain a CST, and references *N.J.A.C. 6:28-3.1(b)* with respect to the required composition of that team.⁵ The Board notes that it presently maintains a CST comprised of 4.5 staff members: a CST administrator, one psychologist, one social worker, one full-time learning disabilities teacher and one part-time disabilities teacher. The Board further appends a copy of the New Jersey State Department of Education Office of Special Education Programs District Staff Management Ratio for the period 1980 through 1995. The Board argues that Wildwood compares to the State averages for *total student enrollment* in the following manner:

- Ratio Between School Psychologist and Students
State Average - 1:1,187
Wildwood - 1:1,025
- Ratio Between School Social Worker and Students
State Average - 1:1,063
Wildwood - 1:1,025
- Ratio Between Learning Disabilities Teacher/Consultant and Students
State Average - 1:1,051
Wildwood - 1:1,025

The Board asserts that these numbers suggest that it meets the State median for the ratios for school psychologist and for school social workers, when total enrollment is considered. And, the Board notes, it would appear that Wildwood is overstaffed by one-half Learning Disabilities Teacher/Consultant. However, the Board reasons that the numbers change when the ratios consider only classified students, which is the student population with which the CST works. Compared to the State average, the ratio of *classified students* to members of the CST is as follows:

- Ratio Between School Psychologist and Students
State Average - 1:147
Wildwood - 1:213
- Ratio Between School Social Worker and Students
State Average - 1:132
Wildwood - 1:213
- Ratio Between Learning Disabilities Teacher/Consultant and Students
State Average - 1:130
Wildwood - 1.5:213 (or 1:142)

Thus, the Board concludes that it is appropriately staffed with regard to the learning disabilities teacher/consultant and is understaffed by some 50% with regard to the psychologist and social

⁵ The regulation requires that the CST consist of a school psychologist, a learning disabilities teacher/consultant and a school social worker. *N.J.A.C. 6:28-3.1(b)*

worker. The Board argues that it will be unable to provide proper services, as required by law, if one employee is eliminated.

The City argues that this reduction will not affect T&E, in that it will not affect classroom activities. The City contends that there are sufficient CST professionals remaining in the district to assure the needs of the students are met and to advance the intended program. The City finds that the quality of the program will not be affected by the reduction.

Upon review, the Commissioner finds that the district can provide adequate CST services to its student population through the core child study team required pursuant to *N.J.A.C.* 6:28-3.1(b), without the additional need for a CST administrator. Accordingly, the reduction of \$48,544 is sustained.

Disputed Line-Item Number 11

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
6890	11-000-222-800	Other Objects (School Library Books)	\$14,600	\$3,100

The Board argues that access to newspapers and periodicals which offer more than a local perspective are essential to providing T&E.

The City, after review, finds that this reduction, which affects the purchase of periodicals and newspapers, will not affect the quality of the educational program, and is a nonessential item. The City argues that the remaining funds are sufficient, noting that in the prior year, \$5,513 was budgeted and only \$2,872 was spent.

Upon review, the Commissioner finds that the Board is spending within the level of efficiency established pursuant to CEIFA for supplies, notwithstanding that this account has increased over last year's appropriation. Moreover, the City has not provided a specific

demonstration of the manner in which costs could be reduced to the degree required by its action. Accordingly, the reduction of \$3,100 is restored.

Disputed Line-Item Number 12

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
6910	11-000-230-100	Salaries/Undistr. Exp./ General Admin.)	\$282,107	\$5,531

The Board notes that \$5,031 of the reduction is attributed to substitutes for the superintendent's office. It observes that the superintendent's office staff consists of one person: the superintendent's secretary. The Board office, prior to 1996, consisted of three people: the assistant board secretary and two computer operator/bookkeepers. The assistant Board secretary, however, was "riffed" as a result of last year's budget defeat. Thus, the substitute pay is essential. In that two people now perform the work of three, the Board administrator must have the ability to bring in additional help, the Board argues, at peak times of the year, e.g., during the budget process, the auditing process and the year-end close down. Additionally, the Board avers that the clerical employees are entitled to vacation and sick time; there are no additional personnel to substitute for someone who takes vacation or uses sick leave. The persons in these offices ensure that teachers are paid, there will be money for textbooks and other items which are essential to T&E.

The Board further notes that \$500 of this reduction is for the treasurer's salary. The treasurer is the chief financial officer of the Board. The Board asserts that since this person is controlled by the City, if the City can convince him to take less money, so much the better.

The City finds that this reduction, substitute pay for the superintendent's office, will not affect T&E in the district. The City contends that the Board can reallocate existing

personnel services and eliminate this expense entirely. The City argues that this reduction will produce a more efficient and thorough educational program in the district.

Upon review, the Commissioner notes that the Board spends well above the level of efficiency established by CEIFA for clerical salaries, and that the Board should be able to make adequate provisions for sick and vacation coverage without the need for additional staff. Accordingly, the reduction of \$5,531 is sustained.

Disputed Line-Item Number 13

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
6920	11-000-230-331	Legal Services	\$57,786	\$13,186

With respect to the City's suggestion, *infra*, that bond counsel and labor counsel be eliminated, the Board argues that labor relations have become a specialty and it is in everyone's best interest that the cheapest possible contract be negotiated with employees. As to the bond counsel, the Board notes that it is the position of many major lending institutions not to accept a legal opinion from an ordinary attorney but, rather, to require a letter written by bond counsel. The City's position, the Board asserts, is short-sighted. If a bad contract is negotiated, more money will be spent, and the budget will increase. The Board further directs attention to its arguments with respect to Disputed Line-Item Number 29, *infra*.

The City finds that the Board can reduce its legal fees by the above-stated amount without affecting T&E. The City notes that the Board solicitor's salary is \$19,600, with \$25,000 allocated for additional legal services, \$2,500 for legal services related to bonding, and \$10,686 for legal services involved with negotiations. The City argues that the school solicitor can do the negotiations and bond work within the salary parameters, not unlike the City's own solicitor.

Upon review, the Commissioner finds that, in light of his determination on the use of additional state funds as noted below, there is no longer a need for an appropriation for separate bond counsel in this year's budget. In other respects, however, the Board's allocation for legal expenses is appropriate for its circumstances. Accordingly, \$2,500 of the reduction is sustained, and \$10,686 is restored.

Disputed Line-Item Number 14

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
6950	11-000-230-530	Communications/Telephone	\$25,150	\$3,150

The Board argues that the telephone is a necessity of modern society. It must use the phone to communicate with the Department of Education in Trenton, the county superintendent in Cape May Court House, the police department, the fire department and other persons and entities necessary to maintain the health and safety of the children, as well as for providing T&E. Additionally, the Board indicates that it is in the process of installing ISDN lines for distance learning and use of the Internet. There is a growing need for more of these lines, and as the system grows, so will the cost of telephone use. Use of these modern methods, affirms the Board, is essential to T&E. The Board further notes that for the 1996-97 school year, for the period July 1 through April 30 (10 months), the Board spent \$22,000. The Board questions how it can attain a lower phone bill than it expended in 1996-97, in an age of escalating prices. The Board further indicates that the Commissioner has held that “***technical education is essential to a thorough and efficient educational system to prepare students to function effectively in this age of advancing technology.” (Board's Reply at p. 15, citing *Board of Education of the Township of Mansfield v. Township Committee of the Township of Mansfield*, Commissioner's Decision February 10, 1995.)

The City determined that this reduction could be effectuated without affecting T&E. In 1995-96, while the budget for this line item was \$22,000, the actual expenditure was \$20,773. The City notes that, after review, it is its position that the budget should be reduced to the amounts of the 1996-97 budget allocation.

Upon review, the Commissioner finds that notwithstanding that the Board's level of overall expenditure for telephone/communication expenses may have increased from 1995-96 levels, the June 30 Board secretary's report for 1996-97 reveals that \$27,000 was appropriated to this account and only \$14,976 was expended, with no encumbrances remaining, leaving a balance of \$12,023. Accordingly, the City's reduction of \$3,150, which brings the Board's 1997-98 allocation to \$22,000, a level sufficiently above prior-year expenditures to allow for growth in service needs and price increases, is sustained.

Disputed Line-Item Number 15

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
6960	11-000-230-590	Other Purchased Services	\$53,950	\$6,600

The Board initially points out that the City seeks reductions in two areas: expenses of the Board of Education (\$4,000) and in the appropriation for Special Election for Bond (\$2,600). In the former area, the Board asserts that monies are used to purchase supplies for the business administrator's office, including, but not limited to, office supplies, diskettes, postage, computer supplies and copier supplies. Additionally, the business administrator's convention, which he is required to attend under the terms of his contract, costs approximately \$300. The Board warrants that, without these supplies, the Board office cannot function; there will be no monies to pay teachers, to pay for text books, computers and all other items utilized to provide T&E. In this regard, the Board underscores its arguments set forth in Disputed Line Item Number 12, *supra*.

The Board further points out that the budget for the 1997-98 school year was \$14,000, which is not only reasonable, but in line with past expenditures. It further points out that the City concedes that the reduction should only equal the total amount expended during the prior year and, on that basis, there should be no reduction. The Board has budgeted only \$14,700, or more than \$1,200 less than what was expended during 1996-97. The Board finds that it will be impossible to provide T&E without these essential financial underpinnings, particularly in light of sharply diminished surplus.

As for the \$2,600 reduction to Special Election for Bond, the Board refers to its arguments for Disputed Line Item number 29, *infra*, and Disputed Line Item Number 13, *supra*. It adds that the City “is bound and determined that no referendum is approved authorizing the necessary repairs to the Wildwood High School.” (Board’s Position Statement at p. 13) Yet, the Board asserts, the leaky roof, inadequate fire system and aged and defective electrical system threaten the safety of the students and, therefore, the ability of the school to provide T&E. The Board also notes that, in the 81-year-old high school building, water is leaking throughout the roof tiles and into the third floor classrooms.

The City argues that the \$6,600 reduction may be effectuated without impacting T&E. The City further asserts that the \$2,600 reduction could automatically be made, as the Board has publicly declared that the bond issue for the roof will not proceed. In addition, the City has determined that the Board secretary’s office can reduce expenses by \$4,000. Such a reduction, the City claims, would only reduce the total amount appropriated to make it equal to the previous year’s budget allotment. Moreover, the City notes that both of these allocations are for non-classroom activities.

Upon review, the Commissioner finds that, in light of his determination on the use of additional state funds as noted below, there is no longer a need for an appropriation for a

special bond election in this year’s budget. In other respects, however, the Board’s allocation for supplies and related Board expenses is within established efficiency expectations. Accordingly, \$2,600 of the reduction is sustained, and \$4,000 is restored.

Disputed Line-Item Number 16

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
7010	11-000-240-103	Sal. of Principals/Asst. Princ.	\$211,869	\$51,300

With respect to the proposed elimination of the position of athletic director (AD), the Board refers to *N.J.S.A.* 18A:26-2.1, which requires that directors of athletics possess a supervisory certificate issued by the State Board of Examiners. The Board continues, arguing that, for it to maintain its athletic program, it must have a properly certified AD. In support of its contention that the athletic program is an essential element of T&E, the Board refers to *N.J.S.A.* 8A:35-5, which requires each district to maintain a mandatory course of study in physical education, and to *N.J.A.C.* 6:29-3.2(c) which requires local boards to provide, by regular appropriations, suitable and adequate equipment for carrying out the program for physical education activities. Moreover, the Board notes that the AD performs a variety of functions which cannot be adequately handled by anyone else. Those functions are identified as: overseeing all physical education and interscholastic programs; scheduling and arranging transportation; supervising and recommending the hiring and firing of coaches; arranging for State-required medical examinations; structuring the program for each sport; ordering inventories; maintaining and storing sporting equipment; and managing the athletic budget. The Board further notes that, notwithstanding the unusual hours which the AD must keep, as well as the fact that he works 12 months per year, he is compensated at a lower salary than some teachers in the district.

The Board further argues that the AD in its district must contend with three unique problems. First, as an inner city urban district, it does not own facilities for outdoor sports. Thus,

the AD has the added burden of locating sites for many athletic events, and arranging the necessary transportation. Second, few faculty members in the Board's small district volunteer for coaching positions. Thus, the AD must recruit coaches from outside the staff. Such coaches frequently require close supervision. Third, the financial stability of the district is substantially dependent upon tuition from its sending districts, and parents are increasingly opting to send their children to districts other than the Board's. The Board posits that one of the significant attractions which it has to offer is a solid athletic program. Thus, the AD bears the burden of presenting a strong program, a burden which is essential to the survival of the district.

The City argues that the position of athletic director may be eliminated without affecting the district's ability to provide T&E. The reduction, the City notes, coincides with and supplements the reductions as noted in other areas of the athletic department, *supra*.

Upon review, the Commissioner finds that the administrative and supervisory level staffing of the district is such that a separate athletic director position is not necessary for provision of T&E. Such duties as are found necessary to maintain an efficient level of extra- and co-curricular activity can be assigned to other appropriately certificated staff. Accordingly, the reduction of \$51,300 is sustained.

Disputed Line-Item Number 17

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
7030	11-000-240-590	Sal. of Sect'l and Clerical	\$207,456	\$650,343

The Board notes that the City intends to eliminate a secretary in the high school office and a secretary in the elementary school office, yet offers no rationale for these cuts. The Board further argues that the City eliminated one secretarial position from the budget in 1995-96, and one secretarial position from the budget in 1996-97. As a result, the Board consolidated the

high school office and the guidance office staff. The office now contains six secretaries to serve the principal, the vice principal and the guidance department, which the Board contends, is “bare bone staffing.” (Board’s Position Statement at p. 18) There is no latitude for vacations, sick leave and pregnancy; there is virtually no money for substitute salaries. The Board further provides a list, which is not recounted herein, of the duties of the high school principal’s secretary, the vice principal’s secretary, the secretaries for the guidance office and the elementary school. The Board reasons that if such secretarial functions are not performed, the school does not operate, as a competent clerical staff is the backbone of the organization

The City has determined that a reduction in the amount of \$50,343 will not affect the district’s ability to offer T&E. Specifically, upon its review, the City finds that the Board may eliminate two secretarial positions, in that sufficient personnel is available to cover these positions. The City further contends that this reduction constitutes a non-classroom cut which would not affect the quality of the district’s educational program.

Upon review, the Commissioner finds that the Board spends well above levels of efficiency established pursuant to CEIFA for clerical salaries, and that the present staff configuration can be reduced by two persons and still meet the T&E needs of the district. However, the amount of reduction necessary to effectuate this change must be lowered to \$35,579, in that the two salaries eliminated must be presumed to be the least senior and, hence, the two lowest listed in the employee salary schedule submitted with the Petition of Appeal. Accordingly, \$35,579 of the City’s reduction is sustained and \$14,764 is restored.

Disputed Line-Item Number 18

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
7100	11-000-260-100	Sal./Operation and Maint.	\$415,277	\$78,529

The elimination of two custodial positions, as suggested by the City, *infra*, is not feasible, according to the Board. The Board notes that in 1995-96, respondent cut one custodian from its budget, and it has been short staffed ever since. The Board further provides that the high school is a three-story building constructed in 1916, containing 84,481 square feet; it is currently “manned” by five custodians. These custodians are each already expected to clean 16,900 square feet, some 50% more than the standards set by Service Master, Inc., the company which has serviced the Board for a number of years. Similarly, the custodians are currently asked to clean in the elementary schools nearly 3,000 square feet more than recommended. Moreover, the Board asserts it is necessary to hire substitutes and have the existing staff work overtime to make up for its understaffing. The Board concludes that it cannot afford to lose another custodian, nor to eliminate the substitute and overtime pay.

As for the supervising custodian which the City seeks to eliminate, *infra*, the Board insists that the custodians must be supervised. The supervising custodian must make decisions and be responsible for the buildings; deal with tradespeople, contractors and architects; be the contact person for the school’s administrative staff; take control during emergencies; allocate work and check to see if the work is completed. Working in a dirty school, the Board reasons, is not conducive to efficient education; it may impair the health of students which impacts on absenteeism.

The City has determined two custodial positions may be eliminated without affecting the Board’s ability to provide T&E. Specifically, the City proposes to eliminate one supervisory position at the high school (\$46,000) and one district position (\$20,263). Additionally, the City finds that the appropriation for overtime pay in this line is excessive. Thus, the City insists that the Board should reduce such overtime costs and improve the efficiency of the department.

Upon review, the Commissioner finds that, notwithstanding that the Board spends above levels of efficiency established pursuant to CEIFA for operations and maintenance, the Commissioner cannot ignore that the maintenance needs of older buildings are, in fact, greater, and that the Board's current staffing pattern is appropriate to its needs. The Commissioner also finds, however, that such staff should be sufficient for these needs without extensive payment of overtime. Accordingly, \$12,266 of the City's reduction is sustained and \$66,263 is restored.

Disputed Line-Item Number 19

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
7120	11-000-260-420	Cleaning, Repair and Maint.	\$142,950	\$1,500

Responding to the City's proposal to eliminate these funds, the Board clarifies that the funds are not for regular trash pick-up, but rather for disposal of bulk trash which the Board effectuates twice or three times annually. The Board explains that, on these occasions, it is necessary to rent a dumpster. The trash is taken to the Cape May Municipal Utilities Authority landfill, where the Board pays the tipping fee to dump the materials in the landfill. The \$1,500 is for the rental of the dumpster and the tipping fee. The trash and debris cannot be left to accumulate at school, lest they become a health hazard.

The City argues that this reduction in the amount allocated for trash pick up will not affect the Board's ability to offer T&E. It notes that the City is responsible for the trash pick up, and these monies are not necessary.

Upon review, the Commissioner finds that the City's provision of trash pick-up services should eliminate the need for additional services. Accordingly, the City's reduction of \$1,500 is sustained, contingent upon the City's agreement to provide pick up of bulk trash on a basis sufficient to prevent health and safety hazards on school property.

Disputed Line-Item Number 20

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
7170	11-000-260-610	Custodial Supplies	\$31,000	\$8,500

The Board argues that the Wildwood High School, an 81-year-old building, contains 47 classrooms, 12 bathrooms and assorted offices, locker rooms and a cafeteria. The Glenwood Avenue School contains 26 classrooms, 6 bathrooms, a number of offices and a kitchen. These rooms generate trash and must be swept daily; each must be disinfected. The Board, by way of illustration, notes that in the 1995-96 school year, it expended \$29,075 on custodial supplies; in 1996-97, it expended \$32,280 on custodial supplies.⁶ Thus, the proposed appropriation, according to the Board, is not unrealistic. The Board avers that the health and safety of the children are at stake.

The City, upon review, argues that the Board has more than doubled its allocation in this line item from the prior year. The prior year's budget was \$10,000; the proposed budget was \$28,500. Thus, the City argues that the custodial department can reduce its utilization of supplies without adversely affecting the Board's ability to offer T&E.

Upon review, the Commissioner finds that, notwithstanding that the Board spends above levels of efficiency established pursuant to CEIFA for operations and maintenance, the Commissioner cannot ignore that the maintenance needs of older buildings are, in fact, greater. Additionally, the Commissioner has confirmed that the Board's prior year expenditures in this area are consistent with proposed expenditures, and are not, as claimed by the City, significantly lower. Accordingly, the reduction of \$8,500 is restored.

Disputed Line-Item Number 21

⁶ The Board notes that it is "mystified at Respondent's claim that the prior year's budget was \$10,000." (Board's Reply Statement at p. 19) In fact, the Board clarifies, the prior year's budget was \$32,950, and the final expenditure was \$35,279.

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
7180	11-000-260-620	Energy (Heat and Electricity)	\$264,218	\$15,000

The Board notes that it has budgeted \$190,575 for electricity for 1997-98. In 1995-96, it spent \$176,546 on electricity and in 1996-97, it spent \$178,397. The increase, the Board posits, is attributed to adding air-conditioning in significant parts of the buildings. Further, the Board states that, having acquired 60 computers, the air-conditioning will be necessary to provide the proper acclimatization. The Board further contends that the City's reduction is based solely on the Board's prior usage, and does not consider the anticipated increase in electricity which results from the acquisition of computers.

As for the City's reduction for gas usage, the Board notes that gas is primarily used to heat the school, to heat hot water at both schools and to heat the stoves at the high school cafeteria. The Board affirms that it spent \$61,505 on gas in 1996-97, despite the fact that the winter was unusually warm. Thus, its current budget of \$71,643 is not unreasonable.

The City finds that these reductions will not impair the Board's ability to offer T&E. With respect to electricity, the City argues that the prior year's actual expenditure was \$173,476. The proposed budget for 1997-98 was \$190,575. Thus, the City finds that this nearly 10% increase is unnecessary. Additionally, the City notes that the Board's prior year appropriation for gas was \$67,489. The actual expenditure was \$62,320.31. The City reasons that it appears that the costs for the current year are commensurate with those of the prior year. Thus, the proposed figure of \$71,643, is according to the City, excessive.

Upon review, the Commissioner finds that, notwithstanding that the Board is spending at an efficiency level above that established pursuant to CEIFA, the Board has budgeted for amounts consistent with its actual past experience, with a reasonable increase to accommodate

the new energy needs associated with its acquisition of computers. Accordingly, the reduction of \$15,000 is restored.

Disputed Line-Item Number 22

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
7270	11-000-270-512	Contracted Services Transportation	\$42,000	\$10,000

With respect to the two reductions in this line item, athletic transportation costs (\$5,000) and computer transportation costs (\$5,000) the Board argues that the net effect of removing athletic transportation from the budget is to eliminate athletics. Athletic transportation, according to the Board, is a fixed cost set by contract bid pursuant to the Public School Contracts Law. As a result of the bid, the Board pays \$22.50 per hour for this transportation; it does not use its own buses, since it does not own buses. The Board further notes that it is a member of the Cape-Atlantic League, which includes schools not only in the named counties, but in Cumberland County, as well. It is not uncommon for students to travel to Atlantic and Cumberland Counties to compete. The average transportation cost of an away game is \$90, avers the Board. Thus, the \$5,000 reduction in athletic transportation will eliminate approximately 56 away games. If away games are eliminated, the Board reasons, then 56 home games will be similarly eliminated, since, under NJSIAA Rules, it is necessary to play a home and away series. The Board concludes that this reduction will effectively eliminate a substantial portion of the athletic program, which is an integral part of T&E.

As for the City’s proposal to reduce costs for computer transportation, the Board notes that the Glenwood Elementary School is “hopelessly overcrowded.” (Board’s Position Statement at p. 28) As such, grades 5 and 6 occupy space at the high school. However, in order to use the 30 computers (of the total of 60 which have been acquired) the 5th and 6th grade

students must be transported to the Greenwood School. In this regard, the Board pays a busing service of \$50 per day to bus the 5th and 6th graders to and from the Greenwood School; the total cost is \$9,000 per year.⁷ To reduce this amount by \$5,000, argues the Board, will effectively cut off the 5th and 6th graders from use of the computers. Since the Board urges that the ability to use and understand computers is a necessity of the modern world, the failure to provide such training will deprive the 5th and 6th graders of T&E.

The City has determined that a \$10,000 reduction in this line item will not affect the Board’s ability to offer T&E. The City notes that, “[f]rom the current year to the budget year the athletic transportation budget increased from \$15,500 to \$23,000.” (City’s Position Statement at p. 16) The City finds that such a significant increase is not warranted, particularly in light of other budget reductions to the athletic program. Moreover, the City argues that this is also a non-classroom reduction. The City further states, “In addition, the petitioner has included within the proposed overall budget for this department the purchase of a computer costing \$9,000.00. At this time, in light of the budget cuts a computer system, which is not necessary, can not occur.” (*Id.*)

Upon review, the Commissioner finds that the Board has budgeted appropriately for transportation needs which serve as an integral part of its T&E program, and that reductions to a transportation account cannot be made on the basis of alleged inappropriate expenditures in other areas. Accordingly, the reduction of \$10,000 is restored.

Disputed Line-Item Number 23

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
7430	11-000-290-330	Purchased Prof. Services	\$27,500	\$2,500

⁷ The Board notes in its reply statement that the City’s observation, *infra*, that the \$9,000 will be used to purchase a computer system is erroneous. (Board’s Reply Statement at p. 21)

The Board's explanation for the increase in this item is that it contracts out its computer programming for the District's central computer network to a service company, and the annual contract has been increased from \$22,500 to \$25,000 for 1997-98. The Board requires these services if the computers are to operate.

The City finds that a reduction in this line item will not affect the district's ability to provide T&E. It notes that the budget appropriated for the prior year was \$25,000; the actual expenditures were \$23,323.37. The City further observes that the budget appropriated for the current year was also \$25,000. Thus, after reviewing the pertinent information, the City concludes that \$2,500 of the proposed increase was unnecessary. The City again notes that this is a non-classroom reduction which will not affect the quality of the Board's educational program.

Upon review, the Commissioner finds that this line has historically included no costs over and above the computer service contract, which the Board acknowledges to be \$25,000; neither does the Board offer any rationale for additional funds. Accordingly, the reduction of \$2,500 is sustained.

Disputed Line-Item Number 24

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
7550	11-000-310-930	Transfers to Cover Deficit	\$53,500	\$12,000

The Board observes that that this line item contains the cafeteria deficit account; while the cafeteria is supposed to break even, it does not. The Board argues that it is mandated to provide a food service program for its students. Several years ago, the Board continues, it privatized its cafeteria services. Although the change was economical for the district, the cafeteria continues to lose money. This loss, the Board posits, is a direct result of the clash between State regulation and general teenage resistance to nutritious food. By regulation, the Board affirms that it must serve a Class A meal, a hot lunch complete with meat, potatoes and

vegetables. Students, however, do not buy the Class A meal but, rather, choose to buy a la carte at a cheaper price. Moreover, the brief 20-25 minute lunch periods encourage students to an a la carte sandwich rather than an expensive Class A meal.

The Board further notes that, effective March 1997, the State has reduced the amount of reimbursement to be received by the cafeteria, and there has been a steady decline in the availability of government commodities. The Board notes that the deficit generally runs between \$45,000 and \$55,000; the projected amount of \$53,500 is realistic.

The City notes that, in the prior year, the budget for this line item was \$50,000; the actual expenditures were \$42,581.58. In 1995-96, the amount budgeted also exceeded the actual expenditures significantly, Thus, the City reasons that the Board's operating history demonstrates that it has overbudgeted for this account.

Upon review, the Commissioner finds that the Board appears to regularly anticipate that its cafeteria service will run a substantial deficit, and that it has generously overbudgeted this account in prior years. For example, the June 30 Board secretary's report for 1996-97 reveals that of \$50,355 appropriated, only \$29,434 was actually expended and \$1,875 was encumbered. Clearly, the Board can absorb the reduction made by the City; further, the Commissioner cannot condone the running of a cafeteria program that is in continual deficit. Accordingly, the reduction of \$12,000 is sustained and the Board is directed to take such steps as are necessary to operate its cafeteria service on a break-even basis.

Disputed Line-Item Number 25

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
2621	11-150-100-101	Salaries of Teachers (Home Instruction)	\$72,500	\$7,500

The Board argues that homebound instruction is required for any pupil with disabilities and any pupil determined by the school physician to need confinement at his/her residence for at least a two-week period of time, as per *N.J.A.C.* 6:28-4.1 and 4.5. To deprive such students of homebound instruction may be depriving them completely of an education. Moreover, the Board argues that, as an inner city school, it contains an inordinate number of poverty level and/or minority children. As a result, the Board avers, the probability of increased homebound instruction is substantial. Wildwood High School, according to the Board, has an extremely high pregnancy rate and the presence of nationally known gangs creates significant discipline problems. While there is no way to accurately predict what the level of need will be, the Board argues that costs for homebound instructions generally range between \$60,000 and \$70,000. Thus, it reasons that its proposed budget of \$72,000 is realistic.

The City finds that this reduction will not affect the Board’s ability to offer T&E. The City maintains that the Board’s operating history of this program indicates that prior budgets are sufficient.

Upon review, the Commissioner finds that actual experience supports the Board’s contention that costs have ranged between \$60,000 and \$70,000; however, it is not necessary to assume the highest end of this spectrum based on one year’s experience, and the amount remaining after the City’s reduction, \$65,000 should be sufficient for anticipated needs, with any additional costs covered by surplus. Accordingly, the reduction of \$7,500 is sustained.

Disputed Line-Item Number 26

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
2680	11-000-291-270	Health Benefits	\$851,369	\$53,350

The Board asserts that the figures used by the City are arbitrary, and, instead, appends a worksheet depicting the actual cost of health benefits, as well as FICA/Medicare and

Unemployment payments, as reduced by the City, *infra*. The Board reasons that its actual costs for the eight targeted employees amounts to \$50,915, rather than \$64,000, or \$8,000 per employee, as indicated by the City. Thus, the Board asserts that \$13,085 should be restored immediately.

The City, addressing only the reduction to the health benefits line item, contends that the reduction corresponds with the reductions in staff, as noted, *supra*. It further argues that this reduction will not affect the Board’s ability to offer T&E.

Upon review, the Commissioner determines, based on the information provided in the Board’s worksheet and the reductions to staff made above, to sustain \$29,854 and restore \$23,496.

Disputed Line-Item Number 27

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
2620	11-000-291-220	Social Security Contributions	\$99,499	\$9,800

The Board’s arguments for this line item are contained in Disputed Line-Item Number 26.

The City determines that a reduction in the amount of \$9,800 in this line item will not affect the Board’s ability to offer T&E, nor affect its stability. The reduction, asserts the City, is solely the result of the reductions in staff which are addressed above in detail.

Upon review, the Commissioner determines, based on the information provided in the Board’s worksheet and the reductions to staff made above, to sustain \$2,734 and restore \$7,066.

Disputed Line-Item Number 28

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
2660	11-000-290-250	Unemployment Comp.	\$25,000	\$850

The Board's arguments for this line item are contained in Disputed Line-Item Number 26.

The City determines that a reduction in the amount of \$850 in this line item will not affect the Board's ability to offer T&E, nor affect its stability. The reduction, asserts the City, is solely the result of the reductions in staff which are addressed above in detail.

Upon review, the Commissioner finds that the Board's worksheets establish a total unemployment contribution cost of \$781 for the eight positions proposed for elimination by the City. In that the Commissioner has sustained reductions for only six of these positions, the Commissioner finds that the unemployment account must be adjusted concomitantly. Accordingly, the Commissioner sustains \$588 of the City's reduction, representing the average cost of one person's benefits times six, and restores the balance of \$262.

Disputed Line-Item Number 29

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
6910	11-000-230-100	Salaries/Support Services (General Admin.)	\$282,107	\$1,200

The Board, in reference to the City's proposal to eliminate \$1,200 from this line item for the special bond election, contends that twice in the last six months the voters have rejected a bond to fix the leaking roof at the high school building. Both times, the Board notes, the defeat was substantially a result of the Mayor's opposition. However, the Board maintains that the roof still leaks,⁸ the electrical system needs upgrading, asbestos must be removed, the fire alarm system at Greenwood must be upgraded and the auditorium lighting in the high school must

⁸ In its reply position statement filed on August 4, 1997, the Board asserts, "The fact remains that the roof to Wildwood High School is in desperate shape. Leaks in the roof cause rain to come into the building in the Gymnasium, the Auditorium, and the Third floor generally. Classroom ceiling tiles are waterlogged and the asbestos above them is becoming friable. During bad rainstorms, water literally cascades down the Gymnasium

also be upgraded. The Board reasons that each of these needs affects the health and safety of the student population. Unless alternate funding is found, the Board contends, “***it may well be necessary to once again go to a referendum on these issues. In such event, the monies cut by Respondent will be necessary.” (Board’s position statement at p. 10)

The City determines that a reduction in the amount of \$1,200 in this line item will not affect the Board’s ability to offer T&E, nor affect its stability. The City notes that this amount was allocated by the Board for a special election school bond. However, the City argues that, since the Board has publicly declared that it was not proceeding with the bond issue for the roof, the amount is unnecessary.

In view of the Commissioner’s determination on the use of additional State funds as noted below so as to obviate the need for a special election, the Commissioner sustains the reduction of \$1,200.

APPLICATION OF ADDITIONAL APPROPRIATION

In its reply position statement filed on August 4, 1997, the Board contends that monies it “***may receive from the State are desperately needed to repair the roof of the high school. The problems with the roof have been outlined in [Disputed Line-Item Number 29, *supra*]. *** The fact that respondent has consistently fought efforts to effectuate these needed repairs by campaigning against Bond Referendum after Bond Referendum only highlights the necessity of using the \$500,000.00 grant to fix the roof.” (Board’s Reply Statement at p. 26)

In its summation, the City counters that the Board chose not to proceed with the bond issue to repair the roof. As a result, the City contends that the Board should be required to apply part of the grant money to the proposed budget. (City’s Summation, at p. 2)

walls. If remedial action is not taken shortly, the deterioration will exacerbate to the point where the building cannot be occupied.” (Board’s reply statement at pp. 24, 25)

Upon review, the Commissioner finds that the Board has amply established the need for repairs to the high school roof, as well as its history of inability to obtain the necessary funds through bond referenda. Accordingly, the Commissioner finds that the special appropriation made by the Legislature to the district for this purpose should not be used to offset any reductions made herein.

APPLICATION OF SURPLUS

In its advertised annual school district budget statement, the Board projected an unreserved surplus of \$268,015.

The Board’s annual financial report filed pursuant to N.J.S.A. 18A:17-10 (June 30 Board secretary’s report) reveals an actual undesignated unreserved surplus of \$482,632, while the final audited surplus not designated for 1997-98 expenditures is revealed as \$509,306. The Board’s auditor identified \$221,197 of this amount as excess surplus and \$288,109 as undesignated unreserved surplus. However, based upon a calculation of 3 percent of the Board’s General Fund budget, the appropriate amount of undesignated unreserved surplus to be maintained by the Board is \$268,916. Therefore, a total of \$240,390 (\$509,306 - \$268,916), not \$221,197, is available to fund restorations.

SUMMARY

In summary, the Commissioner directs restoration or sustaining of the City’s line-item reductions to appropriations as set forth below.

<u>Line Item</u>	<u>Description</u>	<u>Sustained</u>	<u>Restored</u>
2540	Sal. of Teachers/Athletic Trainer	\$ 51,555	\$ -0-
2680	General Supplies	-0-	3,500
2670	Other Purchased Services (Travel)	-0-	3,000

2640	Other Sal. for Instruction (Aides)	-0-	10,000
2700	Other Objects	-0-	5,000
6110	Supplies and Materials (Athletics)	3,500	16,500
6490	Sal. of Other Prof. Staff (Guidance)	52,000	-0-
6550	Supplies and Materials	-0-	5,500

<u>Line Item</u>	<u>Description</u>	<u>Sustained</u>	<u>Restored</u>
6560	Other Objects	\$ -0-	\$ 4,000
6580	Sal. of Other Prof. Staff (Child Study)	48,544	-0-
6890	Other Objects (Library)	-0-	3,100
6910	Undistributed Expenditures	5,531	-0-
6920	Legal Services	2,500	10,686
6950	Communications/Telephone	3,150	-0-
6960	Judgments Against. Sch. District (Bd. Sec. Expense; Special Election Bond)	2,600	4,000
7010	Sal. Principal/Asst. Principal	51,300	-0-
7030	Sal. of Secretarial and Clerical	35,579	14,764
7100	Salaries (Custodial)	12,266	66,263
7120	Cleaning/Repair/Service	1,500	-0-
7120	General Supplies	-0-	8,500
7180	Energy	-0-	15,000
7270	Contr. Svcs. (Other than Home/School) (Athletic and Computer Transportation)	-0-	10,000
7430	Purchased Prof. Services	2,500	-0-
7550	Transfers to Cover Deficit	12,000	-0-
2621	Special Education Salaries	7,500	-0-
2680	Health Benefits	29,854	23,496
2620	Social Security	2,734	7,066
2660	Unemployment	588	262
6910	Expenses - Board of Education (Special Election)	<u>1,200</u>	<u>-0-</u>
Total Line-Item Determinations:		\$326,401	\$210,637

General Fund Tax Levy Certified by Governing Body:	\$ 5,693,033
Restoration of Reductions:	210,637
Amount of Restoration Funded by Surplus:	(210,637)
Amount of Restoration Funded by Additional State Appropriation:	-0-
Total General Fund Tax Levy for 1997-98:	\$ 5,693,033

Accordingly, the Cape May County Board of Taxation is directed to let stand, as certified by the Board of Commissioners, the tax levy of \$5,693,033 for General Fund purposes of the Board of Education of the City of Wildwood for the 1997-98 school year.

Additionally, the Board of Education is directed to reserve \$29,753 (\$240,390 surplus available less \$210,637 appropriated for restorations herein) as excess surplus to be appropriated in the 1998-99 budget for tax relief purposes.

Finally, the Board is reminded that it has been permitted to exclude its additional State appropriation from consideration herein, as noted above, solely because of the demonstrated need for the repairs for which the appropriation was expressly made. Therefore, any portion of the supplemental State appropriation not used for the designated purpose shall be reserved, in addition to the amount set forth above, as excess surplus to be appropriated in the 1998-99 budget for purposes of tax relief.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

December 19, 1997