

BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF OLD BRIDGE,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF
EDUCATION	:	
	:	
TOWNSHIP COUNCIL OF THE	:	DECISION
TOWNSHIP OF OLD BRIDGE,	:	
MIDDLESEX COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Board appealed General Fund tax levy reductions in the amount of \$1,097,000 made by governing body following voter rejection of proposed budget on April 15, 1997. (Board elected not to dispute an additional \$610,000 in reductions to its proposed budget.)

Upon review of the appeal herein to determine whether Board demonstrated that restoration of specific line-item reductions was necessary in order to maintain stability in the district pursuant to CEIFA, Commissioner determined to restore \$797,000, to be offset by reallocation of \$146,911, for a total General Fund tax levy of \$51,805,087 for 1997-98 school purposes.

February 6, 1998

BOARD OF EDUCATION OF THE	:	
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For the Board of Education, Wilentz, Goldman & Spitzer
(Francis X. Journick, Jr., Esq.)

For the Council, Assistant Township Attorney
(Thomas Hall., Esq.)

PROCEDURAL HISTORY

This matter was opened before the Commissioner of Education on June 18, 1997 through the filing of a Petition of Appeal by the Old Bridge Board of Education (Board), seeking restoration of reductions to the school budget made by the Council of the Township of Old Bridge (Council) 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 \$52,861,998 for the 1997-98 school year. On May 19, 1997, following consultation with the Board as required by law, the Council adopted a resolution determining to certify a General Fund tax levy of \$51,154,998 as sufficient to provide for a thorough and efficient system of education (T & E) in the district. This amount represented a reduction of \$1,707,000 from the tax levy proposed by the Board, and was

effectuated through cuts in nine line items, for the reasons given in the schedule attached to the implementing resolution. By resolution dated May 15, 1997, the Board determined to appeal the Council's reductions and duly filed the within petition.

In its position statement, the Board notes that it is not seeking restoration of all items cut, and that it is only seeking a partial restoration of two items. Thus, the Board is agreeable to accept and implement \$542,000 of the reductions imposed by the Council. The Board makes it clear that of the \$1,707,000 in reductions imposed by the Council, the Board challenges \$1,095,000, which, for the reasons contained below, it seeks to have restored.

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

<u>Tax Levy Proposed by Board</u>		<u>Tax Levy Certified by Township</u>	
General Fund	\$52,861,998	General Fund	\$51,154,998
<u>Amount of Reduction by Township</u>		<u>Amount of Reduction in Dispute</u>	
General Fund	\$ 1,707,000	General Fund	\$1,095,000

An answer to the Board's petition was filed by the Borough on July 1, 1997. On July 21, 1997, both the Board and the Council filed position statements required pursuant to *N.J.A.C. 6:24-7.8*. On August 8, 1997, the Board and the Council each filed responses to the adversary's position statement. On August 22, 1997, the parties each filed a final summation.

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 is taking 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, and that all decisions issued prior to the audit would be contingent on such verification.

Consistent with the above, upon receipt of the parties summations on August 22, 1997, the record of the within appeal was closed and the matter duly 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. The Legislature by way of statutory scheme has delegated the responsibility for providing such thorough and efficient system to local boards of education. Additionally, the Legislature pursuant to *N.J.S.A. 18A:6-9, 22-14 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 a thorough and efficient system of education (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, and 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. (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 including \$4,578,665 in excess of the T&E amount established for the district pursuant to CEIFA. Accordingly, appeal of reductions may be made only on grounds of stability.

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

COMMISSIONER'S DETERMINATION

Following each reduction listed below, the Township's rationale as stated in the schedule appended to its implementing resolution is set forth in full. The arguments of the parties on appeal follow thereafter.

Disputed Line-Item Number 1

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
120	10-303	Budget Fund Balance	N/A	\$300,00

The Council adjusted the budget by upwardly adjusting its anticipated surplus by \$300,000. The Council avers that the Board could easily absorb this amount without placing it in a dire financial position and utilization of this surplus will not jeopardize the provision of a thorough and efficient education.

The Board avers that Council incorrectly anticipated a surplus in its proposed 1997-98 budget of \$2,207,541, which is only 2.7% of that budget. With the \$300,000 reduction imposed by the Council, surplus is reduced to \$1,907,541 or 2.4% of the 1997-98 budget. Unfortunately, the Board was required to spend \$400,000 more in its 1996-97 budget year than it had originally anticipated reducing from \$1,200,000 to \$800,000 the surplus balance to be carried over into the 1997-98 school budget. This unanticipated spending included increases in health insurance costs for the Board's employees attributable to an unanticipated increase in claims. The Board's health insurance costs are calculated on the basis of its claims experience, so that the Board's costs increase as the claims of its employees increase. In addition, repair was required to several water lines, a sink hole, and replacement of a fire hydrant. As a result of this additional \$400,000 in expenditures in the 1996-97 budget year, the surplus available for inclusion in the 1997-98 school budget is estimated to be reduced by \$400,000. Thus, with the Council's reduction

to this item, the 1997-98 budget is estimated to contain only \$1,507,541 in surplus. This is only 1.9% of the Board's 1997-98 budget. The Board contends that it is simply imprudent by accepted school accounting practice to maintain a surplus of 1.9% on an \$80 million budget noting that the State Board of Education has established a minimum surplus standard of 3% of the budget and the Commissioner has applied this minimum when considering budget appeals involving a governing body's appropriation of surplus to reduce the municipal tax levy. The Board contends that the Council has justified its reduction on anticipated revenue, however it fails to identify those sources of revenue which the Board has not accounted for in its budgeted surplus.

The Board objects to Council's assertion that it has failed to demonstrate a reliable track record of the Board's underestimation of surplus. The Board provides an analysis of the average difference between the estimated surplus set forth in the Board's final adopted budgets for each of the school years from 1993-94 through 1995-96, and the year-end audited surplus for each of those same years as well as pages from the audits of the Board's accounts as of June 30, 1994, 1995, 1996 showing the actual surplus as of those dates. These are provided to show that the Board's average underestimation of surplus over the last three audited school years is only \$1.4 million not \$2.4 million as Council calculated. The Board also notes that the accounting principles for school districts were modified with respect to the treatment of the amounts maintained in the minimum premium insurance plan. The Board then avers that the Council has not supported its assertions regarding underestimation of salary costs with facts nor has it explained how the budget transfers implemented by the Board from specific line items were accomplished. Finally, the Board states that the Pension Bond Act will not help the Board, contrary to Council's claims, and that the Council provides no justification for its budget reductions.

Council asserts that the Board has historically underestimated its available surplus and has failed to account for several categories of expense reductions and income in the present budget. It contends that over the last three years, the Board has underestimated its surplus by an average of \$2.4 million dollars per year. Further, it states that as a result

of the Pension Bond Act, the Board has been relieved of its obligation to make \$146, 911 in pension contributions in this budget.

Council then contends that the Board has demonstrated an ongoing capacity to locate and utilize excess funds from various sources within its budget to avert program cuts. Additionally, it avers that the Board made a series of questionable last-minute transfers from its surplus and now claims that it is left with an insufficient surplus balance. The Council then contends an overall lack of budgetary discipline in the management of other budget accounts causes the Board to squander its surplus.

Disputed Line-Item Numbers 2, & 3

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
8270	12-000-400-450	Capital Outlay-Constr. . Sacs.	\$ 407,000	\$407,000
8290	12-000-400-710	Capital Improvements Site Improvements	\$ 315, 000	\$315,000

The Council proposed capital outlay reductions for payments to outside contractors for construction, renovation and remodeling in the amount of \$407,000 and reductions in capital outlay for site improvements in the amount of \$315,000. The Council proposed that the Board utilize Lease Purchase Agreements to finance their capital projects which would result in the deferral of costs over a five year period and thus reduce the impact of these costs on the tax rate.

The Board argues that the projects at issue are not eligible for a lease purchase agreement for a variety of reasons. It contends that sound school accounting practice requires that these projects be budgeted annually. These projects are uniformly of the type required on a recurring basis, annually as a general rule, to maintain and support the 20 school and administrative buildings operated by the Board.

The Board notes that it applied to the Middlesex County Superintendent of Schools and received, as part of the County Superintendent’s approval of the Board’s proposed budget, a spending growth limitation waiver for these very projects. It says this waiver approval constitutes an acknowledgment by the Commissioner that these capital

projects must be completed during the 1997-98 school year to enable the Board to satisfy its educational responsibilities.

It argues that to require the Board to finance these capital outlay projects through a lease purchase agreement would distort the finances of the Board by deferring the payment of for these projects to later years when payment for these projects will compete under the growth spending limitation not only with payment for similar projects which will be necessary in those years, but also with the need to spend more for educational programs and services due to an increasing enrollment trend. The approach of paying for these capital projects in the year in which they are completed is cheaper than the lease purchase option since it avoids debt service, administrative fees and issuance costs.

The Board next asserts that these types of annually recurring capital projects generally are not eligible for lease purchase financing under the rules, regulations and policies of the Commissioner. Additionally, it cannot make the assurance that any lease purchase payments could be made within the growth spending limitation without an adverse effect on the Board's educational product. It argues that such an assurance is a precondition to the Commissioner's approval of a lease purchase agreement.

The Board further notes that it followed the Department's budget guidelines and chart of accounts in preparing its budget and determining the projects to be included and budgeted for in these items. Further, the Board applied to the Commissioner for and the Commissioner approved a spending limit adjustment to permit the Board to budget for the very projects in these items. The Board reasons that had the Board improperly included projects in these items, as the Council contends, the Commissioner would not have granted a spending limit adjustment to permit the Board to budget for them.

The Council claims that while it has reduced the Board's entire budget request for Capital improvements in 1997-98 its proposed solution still enables the Board to attain its capital project goals. It points out that in the 1996-97 budget year, the Board exceeded its budget for construction and renovation account by more than one million dollars. The Council says the Board ignored the fact that Township tax revenues have been increasing each year as well as the strong potential for increased tax revenues in the future due to expansion of the Commercial tax base. It notes that the Board's argument further relies

on certain demographic predictions which foresee increased enrollment. However, the Board fails to set forth sufficient facts in support of these predictions. The Board fails to set forth who prepared these projections, the background and qualifications of prepare, and whether the methodology used to prepare the report has been recognized as reliable by the Commissioner.

The Council next avers that the Board points to no accounting practice or stipulation promulgated by the COE in support of its contention that these projects are budgeted annually.

Disputed Line-Item Number 7

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
7230	11-000-270-109	Student Transp. Svcs. After School Overtime	\$208,000	\$70,000

This item involves overtime for drivers that transport students to and from after-school extra-curricular activities. The Board seeks only a partial restoration, \$50,000, of the amount cut.

The Board argues that it uses its own buses and bus drivers to transport these students and that the late runs are necessary due to the heavily trafficked highways and dangerous roadways in the district, making it unacceptable to permit students to walk home. In addition, because the district encompasses 38 square miles, many students would not be capable for attending or participating in after-school and extra curricular events and programs simply because they could not get home from their schools when these events or programs were ended. The Board had budgeted \$70,000 for such runs and cannot continue to provide these late runs with only \$38,750.

After studying this item, the Board believes that this item could be reduced by \$20,000 without reducing the service. The Board believes it can achieve some economies by making a number of runs more efficient by combining the lesser used runs and eliminating some unnecessary buses. However, any greater reduction would not be

prudent because the schedules of events and programs at the Middle school and High school can be coordinated only so much due to scheduling conflicts.

Council contends that the Board originally budgeted an 8% increase over last year. During pre-appeal negotiations, the Board indicated that of its budgeted amount about 60,000 was intended for transporting student athletes to and from away games. The remainder of about \$146,000 was for overtime to be paid to fifteen drivers who transport participants in extra-curricular activities from the Middle and High School Buildings. Consequently, Council decided to reduce the overtime budget for the after-school drivers by less than fifty percent. Now the Board asserts that the buses for extra curricular activities cost \$108,750 rather than about \$146,000. The Council, however, says it relied on the figures during negotiation and that the Board now fails to present very basic facts in support of this revised figure.

Council next disputes that the Board cannot provide justification for restoration of the Council's \$70,000 cut. It does not find persuasive the argument that the late bus runs would create a significant decline in the participation of the district's after-school, extracurricular and athletic events and programs nor does it find that the Board has demonstrated how such programs would be impacted. Through consolidation of bus trips, it avers that, at worst, some students may be forced to wait for a longer period of time for their bus ride home.

Disputed Line-Item Number 8

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
7260	11-000-270-511-00	Student Trans. Services Contracted Services	2,268,050	\$73,000

This item involves transportation to and from the regular, curricular school program. Such transportation is provided by independent contractors as a supplement to the Board's own buses and staff of drivers. The Board seeks only a partial restoration of the amount cut, \$25,000.

The Board argues that the projected increase in the Board's schools for the 1997-98 school year is 305 students. Without a restoration of \$25,000 to this item, the Board

will not be able to transport all of the students who require, and are entitled to, transportation to and from school. By consolidating routes the Board believes it can achieve economies to enable it to actually drop two routes and save \$28,000. In addition, the Board recently entered into service agreements with neighboring districts whereby the Board's buses will be providing transportation in those neighboring districts, thereby generating an additional \$20,000 in revenue. This is how the Board believes it can address a \$48,000 reduction in this item. But the Board cannot see, and the Council has not provided any workable solutions for, handling an additional reduction of \$25,000 in this item.

The Council explains that it imposed a reduction of \$73,000 for this item which halved the Board's proposed budget increase for outside contractors to transport regular program students to and from school. Most of the District's transportation expenses come from this service which is provided by an outside contract worth more than \$2,000,000. The Board's proposed budget seeks an increase of \$146,000 or 6.8% The Council avers that its consultant analyzed the 54 bus routes being utilized and concluded that it was feasible to impose their efficiency, particularly at the middle school level. Consequently, it was recommended the Board's proposed budget increase be reduced by 50% from \$146,000 to \$73,000 and that any potential impact be mitigated by the recommended service modifications.

Undisputed Line-Item Numbers 4,5,6,&7

<u>Line No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Amount Budgeted</u>	<u>Amount Cut</u>
8300	12-000-400-721	Capital Outlay-Lease Purchase Agreement Prin.	\$353,000	\$353,000
7480	11-000-290-832	Business & Other Support Svcs.-Interest Lease Purch.	\$77,000	\$77,000
7550	11-000-310-930	Food Services	\$389,000	\$105,000
	11-000-230-104	Salaries-Superintendent	\$132,000	\$7,000

The Council proposed a reduction of \$430,000 by deferring until the 1998-99 budget year a prior Lease Purchase Capital outlay consisting of #453 in principal plus \$77,000 in interest. This deferral would be

accomplished by a sale of this debt on the open market. With regard to proposed food service cost reductions, the Council proposed raising meal prices by \$.05 which would raise revenues by about \$15,000. The Council also contends that the Board overestimated its food service deficit for the 1997-98 budget year and proposed that this line item be cut by \$90,000. Beyond this, based upon a new food service vendor, additional overall savings should be reached. With regard to the superintendent's salary, the prior superintendent has retired and his successor was hired at a lesser salary.

The Board does not challenge the first two reductions above, with respect to the board's lease purchase expenditures, since current accounting practices permit it to defer these expenditures until the 1998-99 school year. The Board also does not challenge the reduction in item 7 above because negotiations with the board's new superintendent of schools did result in a \$7,000 savings in salary. In addition, the Board only recently changed food service vendors and entered a new food service contract which guarantees the board a minimum \$105,000 savings. Thus, the Board is agreeable to accept and implement these reductions imposed by Council.

APPLICATION OF SURPLUS

In its advertised annual school district budget statement, the Board projected a deficit in unreserved surplus, thus allocating no surplus funds as revenue and leaving no undesignated unreserved surplus.

The Board's annual financial report filed pursuant to *N.J.S.A. 18A:17-10* (June 30 Board Secretary's report) reveals that [HERE COMPARE THE PROJECTED AMOUNTS WITH ACTUAL.]

Based on the above, the Commissioner determines that [HERE SET FORTH DETERMINATION AS TO ANY FURTHER APPLICATION OF SURPLUS] , subject to verification through the Board's 1996-97 annual year-end audit report.

SUMMARY

In summary, the Commissioner directs restoration or sustaining of the Borough's line-item reductions to appropriations as set forth below. The Commissioner further notes that all restorations to line-item appropriations are restricted in accordance with *N.J.A.C. 6:20-2A.11(b)3*.

<u>Line Item</u>	<u>Description</u>	<u>Sustained</u>	<u>Restored</u>
270	Capital Outlay-		
	Construction Svcs. -		
8290	Capital Improvements		
	Site Improvements		
8300	Capital Improvements		
	Lease Purchase		
	Agreement Principal		
7480	Business & Other Support Svcs.		
	Interest Lease Purchase Agreemt.		
7550	Food Services		
	Salaries Superintendent		
7230	Student Transp. Svcs.		
	Driver Overtime Svcs.	-0-	000
7260	Student Transportation Svcs.		
	Contracted Svcs.		
120	10-303		
	Budgeted Fund Balance		

Total Line-Item Determinations: 9

General Fund Tax Levy Certified by Governing Body: \$51,154,998

Restoration of Reductions:

Amount of Restoration Funded by Surplus:

Total General Fund Tax Levy for 1997-98:

Accordingly, the Middlesex County Board of Taxation is directed to make the necessary adjustments, as set forth above subject to verification through the year-end audit, to reflect a total of \$----- to be raised in tax levy for General Fund purposes of the Old Bridge Board of Education for the 1997-98 school year.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

February 6, 1998