573-03

BOARD OF EDUCATION OF THE TOWNSHIP OF NEPTUNE, MONMOUTH COUNTY,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
NEW JERSEY STATE DEPARTMENT OF EDUCATION,	:	
RESPONDENT.	:	

SYNOPSIS

Petitioning Abbott district claimed the Department erroneously calculated its presumptive supplemental funding award for the 2002-03 school year and wrongfully reduced aid by the amount of the district's surplus in excess of 2%, which the Department prevented it from expending for additional supplemental programs or services. District also sought aid above presumptive level based on claims that loss of unfunded programs and services impaired core elements and essential enhancements of whole school reform.

The ALJ found that, with one exception, the Department correctly calculated district's presumptive aid award in accordance with Court directives and that the district did not meet the burden necessary to establish on appeal that further funding was necessary. ALJ sustained the Department's actions with respect to excess surplus, but found that the Department erred in not providing additional aid for the district's actual and documented expenditures for the second half-day of kindergarten. The ALJ directed the parties to calculate this amount and ordered the Department to disburse the requisite aid.

The Commissioner adopted the ALJ's decision, with clarification, in all respects except funding for the second half-day of full-day kindergarten. Commissioner agreed with the Department that aid was to be calculated on the basis of an underlying budget which must provide for full-day kindergarten, not increased by the dollar amount of second half-day kindergarten expenditures. Petition was dismissed.

October 9, 2003

OAL DKT. NOS. EDU 727-03 AND EDU 728-03 (CONSOLIDATED)
AGENCY DKT. NOS. 46-2/03 AND 122-4/02

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. In accordance with *N.J.A.C.* 1:1-18.4 and extensions duly requested and granted, exceptions were filed by both the Board of Education (Board) and the Department of Education (Department), as were replies by each to the other's exceptions.[1]

In its exceptions, the Board first contends that the Administrative Law Judge (ALJ) erred in failing to recognize that the Department was required to "level fund" the district, that is, to establish presumptive and preliminary supplemental funding for 2002-03 at the amount of supplemental funding provided in 2001-02. Had the Department done so, the Board observes, its presumptive aid amount would have been $6,518,318 rather than $5,844,432. (Board's Exceptions/Reply at 6-7)

The Board further argues that the ALJ erred in concluding that *Abbott IX, supra*, did not establish a new legal standard for 2002-03 supplemental funding requests. The ALJ should not, the Board contends, have applied the "particularized need" standards of

[1] The Board, with the consent of the Department, incorporated its exceptions and reply into a single submission.

regulations expressly suspended for 2002-03 school year, since it is impossible both "to have a time-out from the Abbott K-12 regulatory requirements for one year and to assume that those very same requirements are still in place." Moreover, the Board continues, the ALJ failed to recognize that the Court imposed a *more* rigorous burden on Abbott districts for the 2002-03 school year, not less; under the Court's order, districts were *not* permitted to show student need for an unlimited breadth of supplemental programs and services, but were instead restricted to showing an *educational* need related to *impairment of essential aspects of a district's whole school reform model*. There is no basis, the Board avers, for the ALJ to have substituted the suspended regulatory framework of "particularized need" for the Court's clearly expressed standard, and the Commissioner should, with the exception of the Board's claim for grade 7-8 replacement science books and a new K-5 spelling program, which should be granted directly on the present record, remand this matter to the ALJ for findings under the correct standard. (*Id.* at 7-10, quotation at 7-8)[2]

For its part, the Department agrees with most of the ALJ's findings and conclusions, but takes exception to that portion of the Initial Decision holding that the Department is required to provide supplemental funding to the Board in an amount reflecting actual and documented 2001-02 expenditures for the second half of full-day kindergarten. As it did before the ALJ, the Department argues that it based its preliminary supplemental aid calculation on a budget which included full-day kindergarten expenditures, so that it would amount to "double-counting" to give the Board additional aid based on such expenditures. The Department further notes that it modified its preliminary calculation based on the annual audit of the district's K-12 budget, so that actual and documented 2001-02 kindergarten expenses have, in fact, already been taken into account in the district's aid entitlement.

[2] The Board did not take exception to the conclusions of the Initial Decision with respect to the excess surplus question. (Issue 4, Initial Decision at 26-28)

Finally, the Department cites to *Sloan v. Klagholz*, 342 *N.J. Super*. 385, 395-96 (App. Div. 2001) for the proposition that retroactive monetary relief should not be granted where such relief would have no impact on the school year in question. (Department's Exceptions at 1-6)

In reply to the Board's exceptions, the Department first posits that the Supreme Court in *Abbott IX, supra,* explicitly authorized supplemental funding for 2002-03 at the level of *expenditures* contained in the 2001-02 approved K-12 district budget, *not* at the level of 2001-02 *aid*; therefore, "level funding" is not required in the sense claimed by the Board, and the Department's calculation was accurate. (Department's Reply at 1-2)

The Department next addresses the Board's contention that the ALJ used the wrong standard of proof in assessing the Board's claims for increased aid. While agreeing that the regulations incorporating "particularized need" requests were, in fact, suspended for the 2002-03 school year, the Department contends that the burden of proof set forth in those rules is nonetheless relevant to the instant appeal because the more rigorous standard established by the Court requires *at least* as great a showing as was required in prior years. Specifically, under applicable Court and legislative directives, programs and positions to be funded in 2002-03 must be demonstrated effective and efficient in addressing students' educational needs, a showing which requires at a minimum that the requested elements not duplicate or overlap with existing programs and services, N.J.A.C. 6A:24-5.2(a) (6) and (7), and that they be shown to have been successful based on documented prior experience, N.J.A.C. 6A:24-5.2(a)(4). As found by the ALJ, the Department continues, the Board submitted no documentary evidence meeting this standard, offering instead anecdotal and conclusory testimony relying essentially on a belief that positions and programs should continue in 2002-03 because they existed in 2001-02. (*Id.* at 2-4)

The Department finally objects to the Board's request that this matter be remanded to the OAL, contending that such a remand would be a waste of time and resources because a complete factual record has already been developed. The Department then analyzes in turn, under the standard proposed by the Board, four major areas of claimed need--paraprofessionals, social workers, grade 7-8 science and K-5 spelling programs, and a lease purchase payment for computer hardware--and concludes in each case that the evidence presented fails to demonstrate impairment of core components and essential enhancements of whole school reform. Thus, the Department urges, even if the Commissioner were to adopt the Board's suggested standard, the Board cannot meet its burden of proof. (*Id.* at 4-11)

In reply to the Department's exceptions, the Board counters that the Court did not state that expenditures for the second half-day of kindergarten were merely to be included in a district's supplemental funding calculation; rather, it stated that the supplemental funding amount must be increased by actual and documented expenditures for this purpose. Additionally, the Board proffers, *Sloan, supra*, is inapposite in the present matter because the Court has established specific appeal processes for Abbott disputes, which nowhere restrict districts' entitlement to retroactive relief once disputes have been resolved; indeed, accepting the Department's argument would mean that an Abbott district's attempt to secure supplemental funding could be thwarted simply by the Department's extension of the appeal process into the following school year, thereby undermining the entire Abbott appeal framework. (Board's Exceptions/Reply at 10-12)

Upon his own review and consideration, the Commissioner first concurs with the ALJ that the Department correctly calculated the Board's level of presumptive aid. Like the ALJ, the Commissioner finds that the Court in *Abbott IX, supra,* specifically authorized preliminary supplemental funding for 2002-03 at the level of *expenditures* contained in the

prior year's approved K-12 district budget, expressing neither a promise nor an expectation that districts would necessarily receive the same dollar amount of aid as in the preceding year.

The Commissioner further concurs that nothing in *Abbott IX* suggests that the Court intended, as part of its one-year suspension of the overall Abbott regulatory framework, to invalidate the established standard of proof for supplemental funding requests. Rather, as found by the ALJ, the Court agreed to allow a period of maintenance and re-assessment in light of State fiscal exigencies and questions about the efficacy of certain remedial measures embodied in the regulations, but was unwilling completely to foreclose Abbott districts from seeking to demonstrate a need for State funding above presumptive levels:

> And the DOE having further requested the ability to preserve the "core elements" of whole school reform as well as certain enhancements of the Success-for-All (SFA) model of whole school reform "tied directly to improving curriculum and instruction under the [Core Curriculum Content Standards] CCCS,"***but to afford districts flexibility to reduce, eliminate or limit growth of other whole school reform enhancements such as technology coordinators and security coordinators,***to authorize districts to eliminate positions and make staffing modifications in various programs such as technology programs, alternative schools, accountability programs, school-to-work and college transition, and to authorize districts to make educational judgments about retaining certain specified positions such as media/ technology coordinator, technology coordinator and drop-out prevention specialist***;
>
> And the Court, although acknowledging the State's fiscal crisis and the motivation underlying defendants' proposal to strictly limit 2002-2003 supplemental funding to 2001-2002 adjusted levels, and although accepting for 2002-2003 budgetary purposes the discretion of the Commissioner of Education preliminarily to set Abbott Districts supplemental funding at such levels but being unwilling to prejudge the merits of an Abbott district's need-based appeal seeking a higher level of supplemental funding;
>
> It is***ORDERED that DOE's request for one year to afford districts flexibility to eliminate, reduce, or limit growth of certain whole school reform enhancements as specified, to eliminate positions and make staffing modifications in various needs-based programs as specified, and to make educationally appropriate decisions about retention of certain positions as specified be and the same hereby is granted subject to the districts' right of appeal based on educational need related to impairment of the core elements of whole school reform and essential enhancements thereof;

> And it is FURTHER ORDERED that the DOE is authorized to impose educationally-appropriate limits on the categories for which needs-based funding requests may be submitted;
>
> And it is FURTHER ORDERED that the DOE may suspend for one year the regulatory requirement for middle schools and high schools to implement whole school reform models, may permit voluntary implementation of models in such schools, and may suspend for one year formal evaluation of whole school reform.
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> (*Abbott IX* at 296-98, citations omitted)

As the above passage demonstrates, contrary to the Board's contention, the Court did *not* disavow the principles embodied in the rules governing requests for supplemental funding, but, instead, acted to limit the context within which such requests could be made and granted. Within the framework constructed by the Court, then, the ALJ was correct in applying established standards of demonstrated need, effectiveness and efficiency in judging the proofs presented by the Board. For the reasons stated in the Initial Decision, and for the additional reasons stated in the Department's exceptions and post-hearing brief, the Commissioner finds those proofs insufficient to meet the Board's requisite burden, whether expressed specifically in terms of "particularized need" or recognized as inherent in the Court's requirement for "educational need related to impairment of the core elements of whole school reform and essential enhancements thereof."

The Commissioner also agrees with, and adopts in its entirety, the ALJ's discussion on allocation of surplus in excess of 2%. Like the ALJ, the Commissioner finds it entirely proper and appropriate for the Department to have directed reallocation of such funds to support core purposes, rather than permit the Board to seek additional aid for such purposes while using excess surplus for supplemental services not meeting requisite standards of demonstrated need, efficacy and efficiency.

In one area, however, the Commissioner does differ with the analysis and conclusion of the ALJ. On the question of additional State aid for the second-half of full-day kindergarten, so as to cover its entire cost, the Commissioner reads the controlling language of the Court to require not that a district's presumptive amount of aid will be increased by the dollar amount of prior-year expenditures, but that these expenditures must be included in the base budget on which aid is reckoned. The Court directed:

> [T]he DOE's request for authorization to preclude any district appeals seeking supplemental funding***is denied subject to the DOE's authority presumptively and preliminarily to establish districts' supplemental funding for 2002-2003 at the level of expenditures contained in the 2001-2002 K-12 DOE approved district budget, as increased by actual and documented 2001-2002 expenditures for the second half of kindergarten, as modified by DOE to take into account 2001-2002 actual expenditures and available revenues based on the district annual audits***. (*Abbott IX* at 297)

To read this language in the manner suggested by the Board and the ALJ would, as claimed by the Department, result in "double-counting" full-day kindergarten costs for aid purposes, a result surely not intended by the Court. As the Commissioner has found elsewhere, the Court has not held that required Abbott programs must be funded *exclusively* by the State, but rather that the State must ensure that sufficient monies are available to fully fund required programs; thus, in the present context, the State's clear obligation is to provide additional funds so as to bring district revenues to the level necessary to support expenditures, including expenditures for full-day kindergarten, at 2001-02 levels as required by the Court. While the Commissioner, like the Court, recognizes adequate funding as critical to achievement of a thorough and efficient system of public education in Abbott districts, he also recognizes, as did the Court, that such funding is a shared responsibility between the State and the local district, and that he has an obligation to ensure that State and local resources are allocated as efficiently and effectively as possible in meeting that responsibility. *Board of Education of the Town of Phillipsburg, Warren County v. New Jersey State Department of Education*,

decided September 25, 2003; *Board of Education of the Township of Pemberton, Burlington County v. New Jersey State Department of Education*, decided September 25, 2003; *Board of Education of the Township of Neptune, Monmouth County v. New Jersey State Department of Education*, decided September 25, 2003; *Board of Education of the City of Millville, Cumberland County, v. New Jersey State Department of Education*, decided September 25, 2003; and *Board of Education of the City of Passaic, Passaic County v. New Jersey State Department of Education*, decided September 25, 2003.

Accordingly, for the reasons expressed herein, the Initial Decision of the Office of Administrative Law is adopted except insofar as it finds that additional aid is required to fund the second half-day of kindergarten. The Petition of Appeal, therefore, is dismissed in its entirety.

IT IS SO ORDERED.[3]

COMMISSIONER OF EDUCATION

Date of Decision: October 9, 2003

Date of Mailing: October 10, 2003

[3] Pursuant to *P.L.* 2002, c. 38, "*Abbott*" determinations are final agency actions appealable directly to the Appellate Division of the New Jersey Superior Court.