

BOARD OF EDUCATION OF THE :
CITY OF CAMDEN, :
CAMDEN COUNTY, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
NEW JERSEY STATE DEPARTMENT :
OF EDUCATION, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning “Abbott” District appealed the Department’s determination of its 2003-04 preliminary “maintenance budget,” alleging that the Department’s review was not in accordance with the July 23, 2003 order of the Supreme Court and challenging the Department’s reduction, as part of its review of noninstructional expenditures for effectiveness and efficiency, of certain noninstructional supervisory positions. The District also sought to continue its appeal of certain issues arising from the budget determination made by the Department prior to the Court’s order.

The ALJ found that the Department appropriately applied the duly promulgated rule implementing the Court’s order for “maintenance,” and further found that the Board could continue its appeal of prior budget issues. The ALJ upheld the Department’s determinations with respect to restoration of programs, capital project and non-instructional salary expenditures, and other items not meeting the definition of “maintenance” or standards of effectiveness and efficiency, but also found that additional funding must be provided to support fully two positions only partly filled in 2002-03.

The Commissioner concurred with the ALJ’s conclusions regarding “maintenance” and most specific issues, notwithstanding that the Commissioner did not find issues arising from the Department’s prior determination pertinent to the appeal herein. However, the Commissioner rejected the conclusion that additional funding must be provided for two previously part-year positions, finding that the Department’s method of calculation provided sufficient salary amounts to cover variances in year-to-year staffing needs.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

OAL DKT. NO. EDU 4157-03
AGENCY DKT. NO. 187-6/03

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Department’s exception to the Administrative Law Judge’s (ALJ) recommendation with respect to inclusion of full salaries for certain positions filled part-year in 2002-03¹ was duly submitted in accordance with the schedule established in response to the Court’s order for expedition. The Board filed neither exceptions nor a reply to the Department’s submission.

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

¹ The Department also seeks, parenthetically, to clarify its position as mentioned in the Initial Decision, page 8, footnote 1. The Department’s actual position is that the Board may pursue issues related to the Department’s May 30, 2003 letter, but the subject of the instant appeal is the August 27, 2003 letter determining the Board’s preliminary maintenance budget and additional *Abbott v. Burke* State aid. (Department’s Exceptions at 1, footnote)

such determination being solely within the jurisdictional purview of the Appellate Division or the Supreme Court. R. 2:2-3(a); *see, also, Pascucci v. Vagott*, 71 N.J. 40, 51-52 (1976); *Wendling v. N.J. Racing Com'n*, 279 N.J. Super. 477, 485 (App. Div. 1995). However, to the extent that he may appropriately do so in an administrative proceeding, the Commissioner also opines that the Department's definition of "maintenance budget," as set forth in N.J.A.C. 6A:10-1.2, is fully consistent with the language and intent of the Court. Thus, like the ALJ, the Commissioner finds the regulatory definition controlling herein, with no conflict between it and the underlying Court order.

The Commissioner further concurs, for the reasons fully set forth in the Initial Decision, that programs not provided in 2002-03, proposed capital outlay expenditures, health benefits, unspecified vocational programs, salary expenditures for noninstructional supervisors, and various "fund 11" accounts (technology, school-based non-salary accounts and aid in lieu of transportation) above 2002-03 levels, were properly excluded from the 2003-04 maintenance budget or reduced under regulatory standards of effectiveness and efficiency.²

However, with respect to increasing salary accounts to accommodate the filling of vacancies, the Commissioner cannot agree with the Initial Decision to the extent that it recommends, based on a "maintenance" analysis, additional funding to fill two specific all-year positions that were filled for only part of the year in 2002-03. Rather, the Commissioner notes that the Department preliminarily established the District's

² The Commissioner does not find issues arising from the Department's May 30, 2003 budget determination germane to the instant appeal, since the August 27, 2003 maintenance budget was developed through a superseding methodology, based on an explicit regulatory standard not in existence during the prior determination, and additionally took account of previously unavailable information. (See, for example, Initial Decision at 19-20.) However, to the extent that the ALJ permitted issues arising from the May 30 determination to be litigated in the present context, the Commissioner concurs with the Initial Decision's specific recommendations as set forth herein.

2003-04 cost of providing positions at maintenance level in a more global fashion, by determining, as nearly as possible without benefit of audit, the actual approved cost of providing positions in 2002-03 and then adjusting for the 4.5% salary increase of the current union contract. While it is true that dollar amounts actually paid out for staffing prior to June 30, 2003 will not perfectly predict the cost of providing comparable staffing in the next, it is *equally* true that vacancies, retirements, resignations, substitutes, part-year positions and the like occur every year, so that the Commissioner finds it entirely appropriate for a preliminary district-wide salary budget to be based on the assumption that staffing is a flexible and continuous process, with ebbs and flows that generally permit the projection of one year's overall experience onto the next. Thus, the Commissioner holds that no special consideration is warranted for two positions in particular, and he rejects the ALJ's recommendation to the contrary.³

Accordingly, the Initial Decision of the OAL is adopted, for the reasons expressed therein, in all respects except as to its recommendation for additional salary amounts, which is rejected as set forth above. The Petition of Appeal is dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2003

Date of Mailing: N/A

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

⁴ Pursuant to *P.L.* 2003, *c.* 122, "*Abbott*" determinations are final agency actions appealable directly to the Appellate Division of the New Jersey Superior Court.