

BOARD OF EDUCATION OF THE	:	
TOWN OF PHILLIPSBURG, WARREN	:	
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. The District challenged the inefficiencies identified by the respondent.

The ALJ determined that the OAL does not have jurisdiction to determine the validity of *N.J.A.C.* 6A:10-1.2. The ALJ also concluded that the Department properly determined inefficiencies in the following areas: contracted salaries, health benefits, special education tuition, 8 new high school teachers, non-recurring expenses, miscellaneous unbudgeted revenue, courtesy busing, 3 full-time supervisory positions, one full-time central office position, one full-time assistant principal, one full-time central office technology position, and 5 of the 7 identified full-time custodial and security staff. The ALJ restored the following: 2 in-class support teachers, 3 preschool-handicapped teachers, part-time instructional aides, one full-time athletic trainer, legal fees, 2 custodial/security services positions, armory rental costs, supplies and materials and a part-time substitute caller.

The Commissioner concurred with the ALJ’s findings and conclusions and adopted the Initial Decision.

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.
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OAL DKT. NO. EDU 5501-03  
AGENCY DKT. NO. 207-6/03

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The record of this local “Abbott” District’s appeal of the Department’s decision on its supplemental funding request for the 2003-04 school year, and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties’ exceptions and replies were duly submitted in accordance with the schedule established in response to the Court’s order for expedition and were considered by the Commissioner in reaching this decision.

Upon careful and independent review of the record, the Commissioner initially concurs with the Administrative Law Judge (ALJ) that the OAL does not have jurisdiction to determine directly or indirectly the validity of *N.J.A.C.* 6A:10-1.2, as such determination is 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). Even if it were to be assumed, *arguendo*, that the OAL has jurisdiction to consider petitioner’s argument regarding the validity and applicability of the regulation at issue, the Commissioner agrees with the ALJ that the Department’s definition of

“maintenance budget,” as detailed in *N.J.A.C.* 6A:10-1.2, does not differ in any appreciable way from the Supreme Court’s definition of that term contained in its Budget Order of July 23, 2003.

Further, based on the record before him and the credibility assessments of the ALJ, *N.J.S.A.* 52:14B-10(c), the Commissioner accepts the ALJ’s factual findings and determines that his analysis and legal conclusions are consistent with the Supreme Court’s Order, as well as the Department’s regulations.<sup>1 2</sup> In so concurring, the Commissioner finds that, except as specifically noted in the text of the Initial Decision, the Department’s determination of Phillipsburg’s maintenance budget is upheld.

Accordingly, the Initial Decision is adopted for the reasons expressed therein.<sup>3</sup>

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

COMMISSIONER OF EDUCATION

Date of Decision:      October 20, 2003

Date of Mailing:         N/A

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<sup>1</sup> In so concluding, the Commissioner finds that, to the extent positions were restored herein, all such positions, together with their concomitant health benefits, if any, are subject to the findings and conclusions at pages 7 and 8 of the Initial Decision regarding the application of the Department’s methodology to determine increases in salaries and health benefits.

<sup>2</sup> The Commissioner clarifies that in concurring with the ALJ’s conclusion that five of the vacant custodial positions remain unfilled, it is his intent that these positions be *eliminated*.

<sup>3</sup> The Commissioner so determines, based upon the proofs brought to *this* record, while acknowledging that the presentation of such evidence may have been disadvantaged by both a Court Order to expedite proceedings and the unavailability of the Comprehensive Annual Financial Report (CAFR) until November 2003. In any event, beyond his determination herein, the Commissioner underscores 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).

<sup>4</sup> Pursuant to *P.L.* 2003, *c.* 22, “*Abbott*” determinations are final agency actions appealable directly to the Appellate Division of the New Jersey Superior Court.