

597-03 (Link to OAL decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu05500-03_1.html)

STATE-OPERATED SCHOOL DISTRICT	:	
OF THE CITY OF PATERSON,	:	
PASSAIC COUNTY,	:	
 PETITIONER,	:	
 V.	:	COMMISSIONER OF EDUCATION
 NEW JERSEY STATE DEPARTMENT	:	DECISION
OF EDUCATION,	:	
 RESPONDENT.	:	

SYNOPSIS

Petitioning “Abbott” District appealed the Department’s determination of its 2003-04 preliminary “maintenance budget” and supplemental aid, alleging that the Department’s review and calculations were not in accordance with the July 23, 2003 Order of the Supreme Court. The District also challenged the Department’s reduction of a nonrecurrent expense pursuant to a painting contract, and reductions, as part of its review of noninstructional expenditures for ineffectiveness or inefficiency, of proposed costs for a Fiscal Monitor position and a cooperative bid purchase contract.

The ALJ determined that OAL does not have jurisdiction to determine the validity of N.J.A.C. 6A:10-1.2, and that such regulation governed this matter. She also adopted the “interpretation” of maintenance budget espoused by the Honorable Richard McGill in *Board of Education of the Town of Harrison v. New Jersey State Department of Education*, and determined that the burden of proof was on the Department to establish the basis for proposed reductions in the District’s budget. The ALJ: 1) concluded that the Department improperly excluded \$3,427,560 in encumbrances from the District’s budget; 2) rejected the Department’s \$9,252,814 increase in the District’s salary accounts as not reflective of necessary new positions; 3) ordered an increase in the Department’s health benefit calculation to reflect additional “necessary” positions and granted the District’s requested increase of \$638,756 for special education tuition; 4) agreed that the Department properly determined that cost overruns associated with the PaintSmart contract were an excludable nonrecurring cost; and 5) agreed that the position of Fiscal Monitor and costs of a cooperative bid program were properly excludable as “inefficient.”

The Commissioner adopted in part, rejected in part and modified in part the Initial Decision. He first clarified the applicable burden of proof and the proper “interpretation” of the maintenance standard. He then: 1) reversed the ALJ with respect to encumbrances, the salary account and special education tuition costs; 2) modified the Initial Decision with respect to health benefits; and 3) adopted the determination of the ALJ as to the excludability of cost overruns under the PaintSmart contract and reductions of the Department, on the basis of inefficiency, for the Fiscal Monitor and the cooperative bid purchase contract.

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.

October 28, 2003

OAL DKT. NO. EDU 5500-03
AGENCY DKT. NO. 204-6/03

STATE-OPERATED SCHOOL DISTRICT	:	
OF THE CITY OF PATERSON,	:	
PASSAIC COUNTY,	:	
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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. Exceptions of Paterson and those of the Department, along with both parties’ reply exceptions 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, which it is noted included transcripts of the proceedings conducted at the OAL,¹ the Commissioner determines to adopt in part, reject in part and modify in part the Initial Decision of the OAL as detailed below.

Preliminarily, the Commissioner is compelled to correct a number of foundational errors which have inextricably colored the Administrative Law Judge’s (ALJ) findings, leading to a number of inaccurate conclusions here. First of these is the ALJ’s mistaken recitation of the “burden of proof” in this matter. The Supreme Court’s Order provides that the Department

¹ Hearing in this matter was conducted on September 3, September 4 and September 8, 2003.

“shall bear the [initial] burden of moving forward to establish the basis for any proposed reductions to the [Abbott] district’s maintenance budget *based on the effective and efficient standard* set forth in the DOE’s emergency regulations.”****Abbott v. Burke*, M-976 September Term 2002, at 7. (emphasis supplied) However, as indicated in the Department’s preliminary maintenance decision letter dated August 27, 2003 (Exhibit R-10), only two adjustments, currently involved in this matter, *i.e.*, \$95,000 related to the salary and benefits for the position of Fiscal Monitor and \$93,600 for a cooperative bid purchase program contract, were made for reasons of inefficiency. Therefore, pursuant to *N.J.A.C. 6A:24-9.6(c)*, with respect to the remaining adjustments made to the District’s maintenance budget herein, the District bears the burden of proving that the Department’s calculations were unreasonable.

Next, the Commissioner observes that the ALJ correctly determined that *N.J.A.C. 6A:10-1.2*, the regulation duly promulgated to implement the Court’s July 23, 2003 Order, must control in the instant proceeding, and that the OAL does not have jurisdiction to determine, directly or indirectly, its validity, 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). Notwithstanding the ALJ’s correct understanding of these issues, she errs in citing to and adopting that portion of the decision of the Honorable Richard McGill in *Board of Education of the Town of Harrison, Hudson County v. New Jersey State Department of Education*, OAL Dkt. No. EDU 5494-03, Agency Dkt. No. 195-6/03, decided by the Commissioner October 20, 2003, wherein he summarizes, what *he viewed* as “the proper interpretation of the definition of ‘maintenance budget’” in the new regulation and the Supreme

Court Order. (Slip Opinion at 9) It is noted that the Commissioner's October 20, 2003 decision in *Harrison, supra*, specifically modified ALJ McGill's definition thusly:

The ALJ next undertakes to address the issue of whether the Department's quantitative method of implementing its regulatory definition of "maintenance budget" is inconsistent with the literal language contained in the regulation and in the Supreme Court's Order of July 23, 2003. The ALJ concludes that the Department's methodology has, in effect, inappropriately substituted the phrase "funds approved and actually spent during the 2002-2003 school year" for the Supreme Court language authorizing funding for "current approved" programs, services and positions and for the regulatory language "approved and provided." The Commissioner observes that while it may be technically correct that merely looking at dollar amounts paid out prior to June 30, 2003 will not necessarily reflect actual costs of programs, services and positions provided, *i.e.*, payment for items actually provided prior to June 30 may not actually have been made by June 30, it is also true that the budgeted amount, likewise, does not necessarily reflect actual costs of programs, *etc.*, provided. Therefore, the ALJ's abrupt conclusion that the budgeted amounts for lines 11 and 15 must be reinstated does not follow from his analysis. Those services, programs and positions, which were provided and which are reflected on lines 11 and 15, were provided at an actual cost which was less than the budgeted cost. The Commissioner concludes that a methodology which begins by estimating the 2003-2004 cost of providing the same programs, services and positions by looking at the actual cost of providing these for 2002-2003 and then adds the projected costs of reasonable, nondiscretionary expenditures and adjustments is a reasonable method for estimating future costs which cannot otherwise be determined with any degree of precision. *(Harrison Slip Opinion at 18-19)*

The Commissioner, therefore, found the Department's implementation methodology fully consistent with the verbal standards set forth in the regulation and the Court's Order, and modified ALJ McGill's interpretation of "maintenance budget" to so reflect, emphasizing that should the Department's utilized methodology prove to be insufficient because of unforeseen circumstances arising during the budget year, N.J.A.C. 6A:10-3.1(g) provides a mechanism for addressing the need for additional supplemental funding.

Consequently, the Commissioner finds and determines that the interpretation of the definition of “maintenance budget” which he has articulated above is applicable herein.

With the underlying foundational precepts governing review of this matter thus clarified, the Commissioner turns to examination and evaluation of the substantive issues in controversy here.

NONDISCRETIONARY EXPENSES

Encumbrances

The Commissioner does not concur with the ALJ’s finding that the Department erred in deducting \$3,427,560 in encumbered funds from the District’s maintenance budget, as it is evident that the ALJ’s analysis and conclusion in this regard reflects her previously discussed misconception with regard to the parties’ respective burdens of proof in this matter. In considering this issue, the Commissioner first finds that a clear appreciation of the differentiation between the terms “encumbrances” and “accounts payable” is beneficial here. In the context of close out procedures for the 2002-03 budget year, an encumbrance is an accounting tool that permits a school district to set aside funds for purchase orders that were issued during the 2002-03 school year for goods or services that were *not* received as of June 30, 2003. Unpaid purchase orders reserved as encumbrances on the June 30 general fund balance sheet, therefore, reflect liabilities to be honored in the next fiscal year for goods and services not received by June 30. An account payable, on the other hand, is an expenditure which was incurred in the 2002-03 school year for goods and services received and/or provided by June 30, 2003. Therefore, the Commissioner clarifies that, to the extent that Paterson’s encumbrances represent charges for goods and services *provided* by June 30, 2003, *i.e.*, they have become accounts payable, these are properly chargeable to the District’s 2002-03 budget and appropriately

included in its “maintenance budget.”” Those of its encumbrances representing goods and services not received by that date are properly excluded from the 2003-04 maintenance budget calculations.

This said, the Department’s exceptions assert that, subsequent to the District’s provision of the number \$3,427,560 as its encumbrances figure to the outside auditor employed by the Department, such auditor contacted the District seeking a breakdown of these “encumbrances” as to whether they were “true” encumbrances or accounts payable. Respondent further reports “the evidence indicates that at the time the Department issued its August 27, 2003 maintenance budget determination, Paterson had identified \$3,427,560 as encumbrances, even after Mr. Triplett [the Department’s employed auditor] requested a further breakdown. ***Thus, prior to the August 27, 2003 maintenance budget determination from the Department, Paterson did not provide any information to the Department that would illustrate that the Department’s determination was in error or unreasonable.” (Department’s Exceptions at 5) Respondent argues that only after the issuance of the Department’s August 27, 2003 letter did Paterson *begin* reclassifying its encumbrances. (*Ibid.*)

The District’s reply exceptions contend that, notwithstanding when the updated information with respect to its encumbrances was provided, the Department has a legal obligation to accept its supplemental documentation and to cure any deficiencies in the District’s budget that were based on the Department’s consideration of outdated and inaccurate information. (District’s Reply Exceptions at 3, 4)

Upon consideration of the arguments advanced by the parties on this issue, the Commissioner is compelled to conclude that petitioner has not met *its* burden of demonstrating that the Department’s deduction of \$3,427,560 in encumbered funds from the District’s

maintenance budget was improper. In so determining, the Commissioner recognizes that the Supreme Court's Order directed the Department to provide the districts with their preliminary maintenance budget figures for the 2003-04 school year by August 27, 2003. In its fulfillment of that directive, the Department, utilizing the most recent calculations provided by the District, made the requisite projections in its August 27, 2003 budget letter. Although the Commissioner recognizes the Supreme Court's encouragement to accept supplemental documentation from districts, the Court's holding cannot be construed to require acceptance of data without benefit of appropriate fiscal review, particularly where the District's Comprehensive Annual Financial Report (CAFR) will be submitted in a week or two from the date of this decision and there will then be finality in the very data in question.

While recognizing that it is entirely possible that adjustments in this area are necessary, in light of the District's burden in this regard and based on the proofs brought to the record, the Commissioner is unable to definitively determine here which of the District's encumbrances have become accounts payable by virtue of the receipt of the encumbered goods or services on or before June 30, 2003 so as to be considered 2002-03 expenditures. He, therefore, concludes that the District's encumbrances were properly excluded by the Department as a budget expense for 2002-03, and he directs that any required adjustments be made, based on updated information, in the course of the District's CAFR review scheduled to begin in November.

Salaries

In consideration of the Initial Decision's recommendation with respect to increases for salaries, the Commissioner disagrees with the ALJ's rejection of actual spending from 2002-03 as an appropriate approximation of salaries needed by the District for 2003-04 and

her determination that positions necessary to continue programs that were filled by substitutes for a portion of the year are required to be funded at the equivalency of a full-time, regular teacher's salary. Such conclusion was not only the result of her, once again, inappropriately shifting the applicable burden of proof but is also wholly inconsistent with the Court's directive and the maintenance standard which required the Department to consider only *actual* expenditures stemming from goods and services provided in 2002-03 in establishing a maintenance budget.

In this connection, it is first noted that the ALJ bases her conclusion in this area on her finding that the Department "has not established its burden that the increase in expenditures for salaries in the amount of \$9,252,814 'represents a reasonable calculation based upon the actual 200[2]-2003 spending that should closely approximate the salary costs incurred in the 2003-2004 school year.'" (Initial Decision at 13) However, as previously established, pursuant to *N.J.A.C. 6A:24-9(c)*, *the District bears the burden of proving that the Department's calculations here were unreasonable or otherwise improper*, a burden the Commissioner finds, on this record, it has failed to satisfy.

The ALJ next undertakes application of the previously rejected "interpretation" of maintenance budget which, as pointed out by the Department's exceptions, leads to a somewhat absurd result:

The crux of [the ALJ's] findings with regard to maintenance may be characterized as a belief that even if the funds were approved in the 2002-2003 school year but were not needed by the school district in the 2002-2003 school year because a program, service or position was provided for with less money than was budgeted, that the school district should still get the benefit of that savings and be allowed to keep that unspent money in its maintenance budget for the 2003-2004 school year. It is hard to conceive that the Supreme Court envisioned the Department awarding aid in a maintenance year to school districts which is in excess of the amount of money

that they were required to spend in the prior year with the noted cost adjustments. (Department's Exceptions at 2)

The ALJ's interpretation also fails to recognize that there will, inevitably, be leaves of absences, retirements and resignations in the 2003-04 school year which will have implications on the employment status of the District's employees, causing fluctuations in its salary account.

To the extent that the Initial Decision suggests, based on a "maintenance" analysis, the necessity of "new positions" to continue the provision of services approved and provided in 2002-03 or salaries for positions which the District asserts were partially funded by federal grants which expired on June 30, 2003, the Commissioner concludes that the District has failed to sustain its burden of establishing that the Department's refusal to fund these positions in its calculation of a "maintenance budget" was improper. Not only does the record lack specificity with respect to an actual "need" for such positions, it further fails to establish the number of positions or the dollar amount involved in this regard. Moreover, the District has not advanced a proffer that it will not be receiving other grant moneys or that funding of these salaries cannot be aided by some other source.

In contrast, and fully consonant with his prior determination with respect to the proper interpretation of "maintenance budget," the Commissioner underscores that the Department's overall charge in this matter was to determine the level of 2003-04 funding that would enable the District to continue in a "maintenance" mode, that is, to implement in 2003-04 the programs, services and positions provided in 2002-03. 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 year, it is *equally* true that originally budgeted amounts and other similar projections are no less imprecise. Thus, in the Commissioner's view, a methodology which preliminarily establishes the 2003-04 cost of providing positions at

“maintenance” levels by determining, as nearly as possible without benefit of audit, the actual approved cost of providing them in 2002-03 and then allowing for reasonable, nondiscretionary adjustments, is a uniform, fair and rational method for estimating future expenditures which cannot otherwise be determined with any degree of precision. In this connection, the Commissioner is not persuaded that this method does not take into account vacancies, retirements, and positions filled for only part of the year, since variances of these types occur every year and a preliminary district-wide salary budget is appropriately based on the assumption that staffing is a flexible and continuous process, with ebbs and flows that, absent specific evidence to the contrary, generally permit the projection of one year’s experience onto the next.

Consequently, the Commissioner finds and determines that, in contrast to the approach espoused by the ALJ, the Department’s calculation of the District’s maintenance budget of \$9,252,814 in this expense category was fully appropriate and wholly consistent with the directives and intendment of both the Court’s order and the governing regulation. It is, again, emphasized that to the extent that results of the application of the District’s “maintenance budget” in this area may be imperfect, *N.J.A.C. 6A:10-3.1(g)* provides a mechanism to obtain additional supplemental funding where unanticipated expenditures or unforeseen circumstances warrant.

Health Benefits

The Commissioner agrees with the ALJ’s finding that “[t]he costs of health care benefits should correspond to the actual number of employees who must be covered.” (Initial Decision at 14) The record reflects that the Department calculated an increase in health benefits of \$4,551,008, a 14.5% increase, basing such projected increase on actual spending during the 2002-03 school year. This calculation is entirely appropriate, being consistent with the

regulatory mandate as well as the Court’s order. The Commissioner specifically rejects the ALJ’s conclusion that this number needs to be adjusted upward to reflect additional positions or the cost of replacing substitute teachers with regular teachers, as such adjustment, as was discussed above, antithetical to the concept of “maintenance budget.”

County Vocational School Tuition

The Commissioner concurs with the ALJ, and notes the parties’ agreement, that the Department properly calculated an increase of \$2,655,026 in this area.

Special Education Tuition

Preliminarily, it is observed that the ALJ erroneously evaluated the Department’s calculation of the District’s special education maintenance budget under the “effective and efficient” standard, thereby improperly shifting the burden of proof in this area to the Department. Rather, the burden here is on the District to demonstrate, by a preponderance of the credible evidence, that the Department’s calculation of its budget for this category of expenses was improper.

With the applicable burden thus clarified, the Department’s exceptions point out:

Paterson’s 2002-2003 revised budget for special education tuition is \$16,531,446 (P-11, R-6). (\$30,854,387 total minus \$13,318,328 in actual spending on regular instruction). Paterson’s request for special education costs for the 2003-2004 school year is \$17,170,202. (P-4). (\$33,645,524 total minus \$16,475,322 in regular instruction). Thus, based on Paterson’s 2003-2004 budget submission, Paterson’s request for special education costs is \$638,756. (Department’s Exceptions at 13)

While the District argues that having to channel some of its \$1 million in increased IDEA funds in 2003-04 special education tuition costs would have a “drastic” impact on the District (Initial

Decision at 15), it makes no such demonstration on the record. Rather, given that the District is receiving \$1 million in increased IDEA funds, while its projected increase in special education tuition costs is only \$638,756, it is readily apparent that reallocation of a portion of the increased IDEA moneys to cover increased tuition costs, leaves the District with almost \$400,000 of these increased funds to cover in-district services. Also particularly instructive here is the Department's exception observation that:

Paterson actually spent \$607,871 less than it budgeted last year (P-10, comparing expended at 6/30/03 of \$16,531,446 with what was budgeted of \$17,139,317). Therefore, given that the district spent close to \$600,000 less than it budgeted, is receiving \$1 million in IDEA which is [\$361,244] more than the district's budgeted increase in special education, the Department's determination to require the district to utilize IDEA funding for special education cost and not provide any additional funding other than the amount the district spent last year, should be upheld.

(Department's Exceptions at 14, 15)

It is noted that the District's reply exceptions object to such a reallocation of IDEA moneys, contending that the Department has overlooked a "critical fact" and a "critical legal point" in this regard. Overlooked factually, it argues, is that "[t]he District's IDEA application seeks funding for special education services to comply with the requirements in student IEPs not for special education tuition." (District's Reply Exceptions at 6) As to the overlooked legal point, it claims entitlement, pursuant to the Supreme Court's order, to established increases in special education tuition and maintains that "[i]t is unreasonable and contrary to law for the Respondent to suggest that the District should take needed funding for special education services to fulfill IEPs in order to reduce the Respondent's legal obligation under the Supreme Court's order to provide the District with needed funding for special education tuition costs." (*Ibid.*) The Commissioner disagrees. The record reflects that the District's 2003-04 IDEA application is not yet finalized and that amendment during the course of the school year is possible. Further, since use of these

moneys for special education tuition is not prohibited; and since the District has not established the necessity of the additional funds it requests; and, concomitantly, it has not established that the Department's calculation of its maintenance budget in this area was unreasonable or otherwise improper, it has not sustained its burden here. The Commissioner, therefore, rejects the ALJ's grant of \$638,756 in additional funding for special education to the District.

CPI Adjustment

The District's exceptions object to the ALJ's refusal to take judicial notice of its official federal government documentation of the "proper CPI adjustment for Paterson." (District's Exceptions at 8) It argues that *N.J.A.C. 1:1-15.2(a)* allows for judicial notice to be taken of matters under *N.J.R.E.*² 201 "that are judicially noticeable - published statistics of the federal government that 'are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned,'" and that the "ALJ erred in refusing to follow the mandate of *N.J.R.E. 201(d)*." (District's Exceptions at 8, 9)

Initially, it is noted that the ALJ had no obligation to grant the District's request, as *N.J.A.C. 1:1-15.2(a)*, dealing with the granting of judicial notice, is discretionary rather than mandatory in this regard. Nonetheless, the Commissioner observes that the District was attempting to have the ALJ judicially notice documentation from the United States Department of Labor evidencing: 1) that the CPI for New York-Northern New Jersey is 3% and 2) that Paterson is included in the New York-Northern New Jersey area.

Irrespective of the content of the District's proffered document, *N.J.S.A. 18A:7F* specifically defines CPI as:

the average annual increase, expressed as a decimal, in the consumer price index for the New York City and Philadelphia

² The District here is referring to the New Jersey Rules of Evidence.

areas during the fiscal year preceding the prebudget year as reported by the United States Department of Labor.

Thus, even if the ALJ had chosen to acquiesce to the District's request that judicial notice be taken of its documentation, such materials would have been of no import as the Commissioner finds that the Department properly calculated the District's 2.11 CPI rate pursuant to statute.

NONRECURRING EXPENSE

PaintSmart Contract

Upon full review of the record and the parties' exception arguments in this regard, the Commissioner is in agreement with the ALJ's conclusion that the Department correctly determined that cost overruns, in the amount of \$294,781, with respect to PaintSmart painting contract for 2002-03 were properly excludable from the District's maintenance budget as a non-recurring cost. In so determining the Commissioner notes that the District, on this record, has wholly failed to sustain its burden of establishing that this exclusion was in any manner improper.³

INEFFICIENCIES

Fiscal Monitor

The Commissioner agrees with the ALJ's determination that the position of Fiscal Monitor is inefficient, necessitating the removal of the salary of \$95,000 and related benefits of this position from the District's maintenance budget. On exception, the District charges that the ALJ based her conclusion in this regard on "erroneous" factual findings. (District's Exceptions at 15) In this connection, it proffers: 1) the reduction in returned grant money each year from 1999 to 2002 exceeded the costs of the monitor's salary (District's Exceptions at 15, 16); and

³ The within record does not contain a copy of any current contract with PaintSmart. Rather, the only documentation in this record with respect to PaintSmart is Exhibit P-12, a Bid Summary and Contract Award Recommendation and a District "Action Form" indicating that the Board had adopted a recommended *one year* contract with PaintSmart, effective July 1, 2001 to June 30, 2002.

2) the Department failed to consider all of the “numerous functions performed by the fiscal monitor” over and above those related to monitoring grants. (*Id.* at 16, 17)⁴

In reaching his conclusion here, the Commissioner finds that the Department has met its burden of advancing a *prima facie* case for the reduction of the budget item relating to the Fiscal Monitor’s position, while the District’s self-serving, conclusory statements are not sufficient to sustain the shifted burden of demonstrating that this budgetary reduction is not justified under the effective and efficient standard.

Cooperative Bid Purchase Contract

The Commissioner concurs with the ALJ that the Department properly reduced the District’s maintenance budget by \$93,600 for its ineffective use of its cooperative bid purchase contract under the inefficient standard. Noting that the District, itself, concedes that the program is inefficient (Initial Decision at 17), it, nonetheless, claims entitlement to funding because: 1) it claims the Department did not fulfill the specific criterion required by N.J.A.C. 6A:10-3.1(c) in order to satisfy its burden of establishing that this agreement is inefficient; and 2) it is contractually obligated to fulfill this contract for another year. (District’s Exceptions at 19-21)

In reply, the Department advances that “the district does not use the cooperative bid program effectively and realize any cost savings***.” (Department’s Reply Exceptions at 12) The Department urges that, in reaching its determination on this issue, it did satisfy the test for ineffectiveness or inefficiency required by N.J.A.C. 6A:10-3.1, pointing out that, pursuant to N.J.A.C. 6A:10-3.1(c)(1)(i),

⁴ Although it is noted that the majority of the “numerous” functions of the Fiscal Monitor, listed by the District in its exceptions, are identified in this individual’s job description as “Performance Responsibilities” of his underlying “Job Goal” which is to “[m]onitor and insure compliance of expenditures related to funded programs and projects as established by local, state, and federal agencies” (Exhibit P-1), it additionally cites to testimony of Superintendent Duroy with respect to additional duties which he has, from time to time, assigned to this position.

the Department can base its determination of an inefficient or ineffective program, position or service by reviewing the historical spending patterns of the district. Mr. Rarick testified that the district entered into a cooperative bid contract but did not use it.***Thus, he properly looked at the historical spending patterns in the district in compliance with *N.J.A.C. 6A:10-3.1(c)*. Further, it is implicit that a district spending money on an unused and unnecessary program will not compare favorably to other school districts. (Department's Reply Exceptions at 12, 13)

Upon review, the Commissioner determines that the Department has sustained its burden of establishing a *prima facie* case for the reduction of this budget item. The District, on the other hand, has not sustained the shifted burden of demonstrating that this budgetary reduction is not justified under the effective and efficient standard. To the contrary, the District, concededly, recognizes that this program is inefficient. That the District may have incurred a contractual obligation in this regard,⁵ cannot provide a concomitant requirement that the Department provide state aid, particularly in these difficult budgetary times, to an ineffective program. Furthermore, it is noted, the District has brought no demonstration to the record of its inability to fund this obligation, if it exists, from other sources. The Commissioner, therefore, sustains the Department's reduction of \$93,600 from the District's maintenance budget.

Finally, the Commissioner notes and accepts the ALJ's Order that, except as specifically noted in the text of the Initial Decision (now modified), the Department's determination of Paterson's budget in all other respects is upheld.

Accordingly, the Initial Decision of the OAL is adopted in part, rejected in part

⁵ The record does not contain a copy of the District's cooperative bid purchase contract.

and modified in part as set forth above, and the instant Petition of Appeal is hereby dismissed.⁶

IT IS SO ORDERED.⁷

COMMISSIONER OF EDUCATION

Date of Decision: October 28, 2003

Date of Mailing: N/A

⁶ 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).

⁷ 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.