

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

SYNOPSIS

Petitioning “Abbott” Board of Education appealed the Department of Education’s determination with respect to funding for the District’s 2004-05 preschool program. Two issues remained to be decided: whether the Department’s decision arbitrarily excluded adequate funding for the education of preschool disabled students for the 2004-05 school year and whether the Department’s decision arbitrarily limited salary increases for all early childhood staff for the 2004-05 school year to amounts below prior or existing collective bargaining agreements.

The ALJ concluded that the Board did not demonstrate that its preschool program would be inadequately funded; that the Department’s methodology for funding the District’s preschool program was consistent with the laws and regulations governing the process; and that the Department’s method was a reasonable means of preparing the preschool budget and should be sustained. As to the staff salaries, the ALJ concluded that the Department did not arbitrarily limit salary increases in the preschool budget because they were in line with what the Board requested; they did not prejudice the negotiations; and they are subject to increase when the actual contractual increases are negotiated. Petition was dismissed with prejudice.

The Commissioner adopted the Initial Decision as his own.

<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>

April 22, 2004

OAL DKT. NO. EDU 1706-04
AGENCY DKT. NO. 55-2/04

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

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions and the Department’s reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4 and were considered by the Commissioner in reaching his decision.

In its exceptions the Board claims that, given the Board’s understanding that it has the ability to seek supplemental funding for special education needs in the Board’s district-wide budget, and given its understanding of the Initial Decision that salary increases in its preschool budget are subject to increases when the actual contractual increases are negotiated, the final decision in this matter should state that the petition in this matter “is dismissed ‘without prejudice’ to the Board’s ability to pursue funding for special education and salary increases from the Department at a later date.” (Board’s Exceptions at 1)

Moreover, the Board contends that the District’s local share or local tax levy that is included in the calculation of Parity Aid (Education Opportunity Aid In the Governor’s FY 2005 budget) is limited to K-12 enrollment in that “both the FY04 Appropriations Act and

the Governor's budget message state that 'enrollments shall be calculated at their full-time equivalent and reduced by preschool....'" (*Id.* at 2) Thus, the Board asserts, local revenues are already included in the Parity Aid calculations for K-12 students and are, therefore, not available to fund special education costs, such as inclusion teachers and related services, for preschool disabled students. (*Ibid.*) The Board, therefore, urges the Commissioner to clarify that "the Parity (or Education Opportunity) Aid calculation cannot be double-counted as revenue for purposes of funding any gaps in preschool funding between State aids and the needed special education funding for preschool disabled inclusion students." (*Id.* at 3)

The Department sets forth its position that the Administrative Law Judge (ALJ) properly dismissed the within petition with prejudice. (Department's Reply at 1) In support thereof, the Department avers that any appeal regarding supplemental funds the District may seek from the district-wide budget for increases in funding for preschool inclusion students and salaries would not be based on the January 15, 2004 letter, which concerns the District's 2004-05 preschool program budget but, rather, it would be an appeal of the supplemental funding provided by the Department for the District's 2004-05 district-wide budget. (*Id.* at 2) In that the subject of this appeal is the Department's preschool budget funding as set forth in the January 15, 2004 letter, not its 2004-05 district-wide budget, the issue of supplemental funding for preschool inclusion students and salaries was not an issue before the ALJ and is not an issue before the Commissioner. (*Id.* at 2-3)

With respect to the issue of the availability of local revenue for preschool education funding, the Department asserts that "the Department did not include local tax levy as part of its calculation of state education aid generated by preschool disabled students.***" (*Id.* at 3) The Department, therefore, concludes that the District's "local tax levy is irrelevant to the

methodology applied by the Department***.” (*Id.* at 4) Moreover, the Department maintains that the Board erroneously assumes that preschool inclusion students are not counted for purposes of determining how much Parity Aid it will receive for the 2004-05 school year. (*Ibid.*) The Department contends that “[t]he exclusion of preschool students from the enrollments used in calculating the per pupil regular education expenditure of each Abbott district in the Appropriations Act and the Governor’s Budget Address does not include preschool inclusion students,” noting that the Core Curriculum Standards Aid, Special Education Aid, Supplemental Core Curriculum Standards Aid, Consolidation Aid and Educational Opportunity Aid a district receives is based on the resident enrollment of a school district. (*Id.* at 5) In that *N.J.S.A.* 18A:7F-3 states that “[h]andicapped children between the ages of three and five years of age and receiving programs and services pursuant to *N.J.S.A.* 18A:46-6’ are included in the school district’s resident enrollment,” the Department argues, preschool inclusion students are thus counted in the district’s resident enrollment and are included in determining the amount of Core Curriculum Standards Aid and Supplemental Core Curriculum Standards Aid. (*Id.* at 5-6)

In further support of its argument, the Department points to Table 1 (Exhibit R-1, page 1) entitled “Funding Generated by Preschool Special Education Student,” pointing out that a preschool inclusion student would generate \$8,309 in Core Curriculum Standards Aid and \$684 in Supplemental Core Curriculum Aid for the District. (*Ibid.*) Additionally, the Department asserts that the ALJ correctly reasoned that the “‘FY04 Appropriations Act does not demonstrate an intent to repeal *N.J.S.A.* 18A:7F-3’” and thus “‘must be read in *pari materia*’ with the Appropriations Act.” (*Id.* at 7) Accordingly, the Department asserts, in that preschool inclusion students are included in a district’s enrollments to determine its regular education expenditures and the per pupil regular education expenditures are part of the calculation to determine Parity

Aid, preschool inclusion students must be included in determining the amount of Parity Aid the district will receive. (*Ibid.*) The Department further asserts that there is nothing to prevent the District from utilizing parity aid to educate its preschool inclusion students. (*Ibid.*)

Upon a thorough and independent review of the record, the Initial Decision, the Board's exceptions and the Department's reply thereto, the Commissioner is satisfied that the findings and conclusions of the Administrative Law Judge (ALJ) are amply supported and should not be disturbed. In so determining, the Commissioner rejects the Board's assertion that the final decision in this matter should be modified to reflect that the within petition is dismissed "without prejudice," to the Board's ability to pursue funding for special education and salary increases from the Department at a later date. The Commissioner finds that there is no basis to reserve the Board's rights in this case as the matter has been fully and fairly litigated and there are no remaining issues to be resolved with respect to the Board's appeal of the Department's January 15, 2004 letter regarding the District's 2004-05 preschool program budget. Moreover, nothing precludes the Board from seeking any additional funds it believes it is eligible to receive under applicable law.

With respect to the Board's claim that "the initial decision incorrectly decided the issue of the availability of local revenue for preschool special education funding" (Board's Exceptions at 2), the record demonstrates that the local tax levy was not included by the Department in calculating State Education Aid generated by preschool disabled students. Accordingly, the local tax levy is not relevant to the methodology applied by the Department in calculating the District's State Education Aid. Turning to the Board's claim that the District's local tax levy included in the calculation of Parity Aid is limited to K-12 enrollment and, thus, is not available to fund special education costs for preschool disabled students, the Commissioner

finds that, although the FY04 Appropriations Act and the Governor's message state that "enrollments shall be calculated at their full-time equivalent and reduced by preschool..." the ALJ correctly concluded that the FY04 Appropriations Act and the Governor's message must be read in concert with *N.J.S.A.* 18A:7F-3, which states that handicapped students between the ages of three and five are to be included in a district's resident enrollment. (Initial Decision at 8) Moreover, the figures set forth in Table I support the Department's contention that it included preschool children in the District's enrollments in determining the District's regular budget rather than in the preschool budget. (*Id.* at 5-6) Since per pupil regular education expenditures are part of the calculation to determine Parity Aid, therefore, the Commissioner agrees with the ALJ that the Department's inclusion of preschool disabled inclusion students in determining the amount of Parity Aid the District will receive is consistent with the laws and regulations governing the process. (*Id.* at 8)

Accordingly, for the reasons expressed therein, the Initial Decision is adopted, as clarified above, as the final decision in this matter.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: April 22, 2004

Date of Mailing: April 22, 2004

* 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. In accordance with the June 24, 2003 Order of the Supreme Court, such appeals must be filed within six days of the Commissioner's decision.