

#122-05

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

SYNOPSIS

The petitioning Board, an Abbott District, filed a petition challenging the Department’s denial of funding for certain items in their revised 2005-2006 Preschool Operational Plan, which the Board asserts are necessary to provide a well-planned, high quality preschool program for New Brunswick’s children. Specifically, the Board challenged denial of funding for: 1) 3.5 vacant positions in the preschool intervention and referral team; 2) district-wide computers, office printers, and software; 3) the summer enrichment program; 4) an executive, fiscal and administrative support staff for the Puerto Rican Action Board (PRAB), a private preschool provider to the district; 5) an additional cook’s assistant for the PRAB; 6) a security system for the PRAB; 7) fringe benefits in excess of 12.5% for non-teaching staff of the PRAB; and 8) a cleaning service contract for the PRAB. The Department transmitted the matter to the OAL as a contested case.

Prior to commencement of the hearing in this matter, the parties resolved several issues, resulting in the petitioning Board’s withdrawal of challenges regarding items number 1 through 3 above. Upon consideration of the evidence presented and the arguments of the parties, the ALJ found that the Department’s reasons for denying the PRAB’s special requests were well-grounded in the applicable Provider Guidance or otherwise clearly rational and directly related to the mandated standard of provision of high quality preschool programs in Abbott districts. The ALJ concluded that the petitioning Board failed to meet its burden to establish that any of the PRAB’s denied special requests are necessary to adequately and efficiently fund a high quality preschool educational program, and further concluded that the appeal should be dismissed.

Upon a full and independent review of this matter, the Assistant Commissioner, to whom this matter was delegated pursuant to *N.J.S.A 18A:4-34*, agreed with the ALJ’s conclusion that petitioner failed to sustain its burden of establishing that the special requests made by the Board on behalf of PRAB are essential to an effective and efficient education in the provider’s program. Accordingly, the Initial Decision was adopted for the reasons stated therein and the Petition of Appeal was dismissed.

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.

OAL DKT. NO. EDU 565-05
AGENCY DKT. NO. 29-2/05

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_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and respondent’s reply thereto were filed in accordance with the necessarily abbreviated exception period for Early Childhood Program appeal matters specified in the Initial Decision.

Petitioner’s exceptions charge that the Administrative Law Judge’s (ALJ) findings of fact and conclusions are contrary to the Provider Guidance,¹ and that “[t]he denial of the Special Requests of the Puerto Rican Action Board [PRAB] will impair the provision of a high-quality preschool education program.” (Petitioner’s Exceptions at 1) To support this contention, petitioner relies on its post hearing brief, contending that this document comprehensively presents the justifying rationale for each of these requests.

In reply, respondent submits that after two days of hearing, where he was able to assess the credibility of the witnesses, and fully consider all of the parties’ arguments, the ALJ

¹ It is noted that to assist districts in their preparation of budgets, during the summer of 2004 the Department provided them with the District One Year Budget Instruction and Guidance School Year 2005-2006 “District Guidance” (R-80) and Private Providers One Year Budget Instruction and Guidance School Year 2005-2006 “Provider Guidance” (Exhibit R-79).

correctly determined that petitioner had failed to sustain its burden of demonstrating that the PRAB special requests were “warranted or necessary for the provision of a high quality preschool program.” (Respondent’s Reply Exceptions at 1-2). As to petitioner’s claim that the ALJ’s findings of fact and conclusions of law are inconsistent with the Provider Guidance, respondent advances that such allegation is without foundation. (*Id.* at 2) In support of its position, respondent urges that consideration be taken of its post-hearing and reply briefs.

The Assistant Commissioner, to whom this matter has been delegated pursuant to *N.J.S.A.* 18A:4-34, has conducted a full and independent review and consideration of the record herein. Upon such review, and noting that the parties’ exceptions raise no new arguments but, rather, rely on those set forth in their post hearing materials, which were comprehensively presented and evaluated in the Initial Decision, the Assistant Commissioner agrees with the ALJ’s conclusion that petitioner has failed to sustain its burden of establishing that any of the Special Requests made by the District on behalf of the PRAB at issue here,² “is essential to an effective and efficient education in the provider’s program.” *See* Provider Guidance, Exhibit R-79, at 15.

Accordingly, the Initial Decision is adopted for the reasons stated therein and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.³

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: _____

Date of Mailing: _____

² Specifically, 1) Funding for Proportional Administrative Expenses (Exhibit R-37); 2) Funding for a Cleaning Service Contract (Exhibit R-38); 3) Funding for an Additional Cook’s Assistant (Exhibit R-39); 4) Funding for Fringe Benefits in Excess of 12.5% of Salary (Exhibit R-42); and 5) Funding for a Security System (Exhibit R-43).

³ Pursuant to P.L. 2004, c. 71, “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.