

BOARD OF EDUCATION OF THE :
CITY OF ELIZABETH, UNION COUNTY, :
 :
PETITIONER, : COMMISSIONER OF EDUCATION
V. :
 : DECISION
NEW JERSEY STATE DEPARTMENT 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 early childhood program for the children of Elizabeth. Specifically, the Board challenged denial of funding for "Special Requests" to fund: 1) two additional secretaries for each of three stand-alone early childhood schools; 2) two additional custodians at each of those three schools; and 3) two additional security guards at each. These Special Requests were virtually identical in substance to requests approved in the prior three years from Elizabeth as part of previous Preschool Operational Plans.

The ALJ found that Elizabeth's justification regarding its need for two more secretaries and custodians at each of the three early childhood schools should be accepted in part and rejected in part, and that the Board's request for three security guards at each of the three stand-alone early childhood schools should be granted. In so deciding, the ALJ found that the Board presented convincing argument in support of a particularized need for three security guards, two secretaries and four custodians per school.

Upon a full and independent review of this matter, the Commissioner agreed with the ALJ's conclusions regarding the Board's Special Requests, and approved funding for three security guards, two secretaries and four custodians per school for the 2005-06 school year for the three schools at issue herein, and emphasized his fiduciary responsibility to assure that funds are both utilized efficiently and allocated in a manner that provides for quality preschool programs. Accordingly, the Initial Decision was adopted for the reasons stated therein, as amplified by the Commissioner, as the final decision in this matter.

<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>

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Both parties' exceptions and reply exceptions were filed in accordance with the necessarily abbreviated exception period for Early Childhood Program appeals and were considered in reaching the determination herein.

Upon a careful and independent review of the record, the Initial Decision and the parties' exception arguments, and noting that the parties' exceptions raise no new substantive arguments, but, rather, rely on those presented to the ALJ, which were comprehensively presented and evaluated in the Initial Decision, the Commissioner concurs with the Administrative Law Judge's (ALJ) conclusion that: 1) the Elizabeth Board's (Board) Special Request 4 for funding for three security guards for each of the three "stand alone" early childhood schools, for a total of nine security guards, be approved; 2) the Board's Special Request 9 for funding for three secretaries per school be approved for two secretaries for each of the three "stand alone" early childhood schools, for a total of six secretaries; and 3) the Board's Special Request 26 for funding of five custodians per school be approved for four custodians for

each of the three “stand alone” early childhood schools, for a total of twelve custodians for the reasons set forth below.

With respect to the funding of three security guards for each of the three pre-schools at issue, notwithstanding the Department of Education’s (Department) document entitled “District One-Year Budget Instructions and Guidance School Year 2005-2006” (Guidance) recommending one security guard per school, the Commissioner finds that the Board herein has demonstrated a particularized need for additional guards due to the size of the schools, the number of exits, the layout of the buildings, the parental traffic and the tender age of the student population. In so concluding, the Commissioner specifically rejects the Department’s contention that only two guards are necessary because the guard assigned to process individuals through the metal detector at the front entrance could also monitor the camera surveillance system that covers the roaming security guard’s areas. (Department’s Exceptions at 4) In the event of a problem or high volume at the metal detector, the guard’s attention could be diverted so as to leave the surveillance cameras untended, possibly with tragic consequences. In that assurance of student safety in this era of school violence dictates an abundance of caution in making determinations which could affect student safety, therefore, the Commissioner grants the Board’s request for three security guards per facility.

Turning to the Board’s request for three secretaries per school, as opposed to the one clerical staff member recommended in the Department’s Guidance document for each stand-alone early childhood building, the Commissioner initially observes that the Guidance document makes no provision for differences in size of school populations. Given the absence of guidance for staffing schools with large student populations and the Board’s persuasive argument that additional clerical staff are needed for the three stand-alone schools at issue, which have populations of 300-350 students, the Commissioner finds that funding for only one secretary per site is not adequate to provide the clerical support necessary to: 1) ensure a high level of

accuracy in the preparation of documents and reports; 2) provide support for the administrative staff; and 3) handle the constant flow of parents and other visitors. The Commissioner is not persuaded, however, that three secretaries per school, as requested by the Board, are essential to the schools' operations. In so concluding, it is noted that the Board does not contend that the individual schools will not be able to perform any specified functions absent the approval of three secretaries per school. After a comprehensive review of the clerical duties to be performed, therefore, it can reasonably be concluded that the clerical duties can be distributed so that two secretaries per school can effectively provide the required services.

Additionally, in reviewing the number of custodians needed for the schools at issue herein, which contain 20 classrooms each, it is noted that the Guidance document recommends three custodians per facility for schools of this size. After reviewing the Board's arguments and documentation in support of its request for five custodians per school, the Commissioner finds that the Board has failed to demonstrate that it will be unable to provide the custodial services required for the efficient operation of its preschool program in these schools unless funding for five custodians per school is approved. However, given the level of cleanliness to be maintained with a school population of this age, where each classroom has an attached lavatory and students participate in multiple snack times daily in their classrooms, the Commissioner finds that three custodians are insufficient in that such staffing would necessitate a one-person shift either at night or during the day. Accordingly, the Commissioner concurs with the ALJ that funding for four custodians per school is appropriate in these circumstances.

With respect to the Board's contention that the Guidance document has all the hallmarks of administrative rules having statewide applicability and should thus be subject to the notice and procedures of the Administrative Procedures Act (APA) (*see Metromedia, Inc., supra*), the Commissioner notes his concurrence with the ALJ's conclusion that:

Not every administrative agency policy, such as those contained in the Guidance, must follow the APA procedures, especially where they have been relatively quickly adopted in response to the drum roll of *Abbott* cases. The “moving target” analogy mentioned in *Abbott v. Burke*, 170 N.J. 537, 544 (2000) and the Court’s reference to the fact that the factual dynamic in these cases constantly is changing, results in a need for DOE to act as quickly, albeit responsibly, as possible. Under the circumstances the DOE’s adoption of the Guidance passes *Metromedia* muster. (Initial Decision at 15-16)

Finally, although the Board’s claim that there is no empirical data to support the staffing ratios in the Guidance document is not totally without merit, the Commissioner finds that the ratios set forth in that document are simply *recommended* staffing levels, and the Special Request process takes into account the need for flexibility to address particularized needs.

In conclusion, the Commissioner approves funding for three security guards, two secretaries and four custodians per school for the 2005-06 school year for the three schools at issue herein. In so determining, the Commissioner emphasizes that it is his fiduciary responsibility to assure that funds are both utilized efficiently and allocated in a manner that provides for quality pre-school programs.

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

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: April 14, 2005

Date of Mailing: April 14, 2005

* 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.