

BOARD OF EDUCATION OF THE :
TOWNSHIP OF PEMBERTON, :
BURLINGTON COUNTY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
NEW JERSEY STATE DEPARTMENT OF : DECISION
EDUCATION, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning *Abbott* district contended that Department’s directive to provide its operational plan and budget for kindergarten as part of its school-based submission, rather than as part of an early childhood education operational plan including preschool and kindergarten, was in violation of statute and *Abbott* court rulings.

ALJ found that nothing in statute or *Abbott* rulings precludes the Department from requiring submission of separate operational plans and budgets for preschool and kindergarten programs, so long as the latter are, in fact, submitted and reviewed to ensure compliance with law.

Commissioner affirmed initial decision, noting that bifurcation of plan has no effect on a district’s entitlement to Early Childhood Program Aid (ECPA), does not suggest that ECPA funds may be used for purposes other than those specified in statute, does not relieve a district from the requirement to provide appropriate kindergarten programs to “Abbott” students, and does not preclude a district from obtaining such additional funding as may be necessary to do so.

OAL DKT. NO. EDU 00678-02
AGENCY DKT. NO. 43-2/02

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The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon review of the record, the Commissioner concurs with the ALJ that nothing in statute or the Court’s rulings in *Abbott* precludes the Department from requiring submission of separate operational plans for preschool and kindergarten programs, or from having the latter incorporated into, and reviewed as part of, an “Abbott” district’s school-based plans. In so holding, the Commissioner expressly notes that such bifurcation has no effect on a district’s entitlement to Early Childhood Program Aid (ECPA), does not suggest that ECPA funds may be used for purposes other than those specified in statute, does not relieve a district from the requirement to provide a suitable kindergarten program as required by law, and does not preclude a district from obtaining, through demonstration of need, such additional funding as may be necessary to implement approved program elements. Thus, there is nothing in the Department’s action that would compromise provision of appropriate kindergarten programs to “Abbott” students as envisioned by the court, consistent with the spirit and intent of operative statute and rule.

Accordingly, the Initial Decision is affirmed for the reasons expressed herein, and the parties are directed to effectuate such communications and review as may be necessary to ensure that an adequate kindergarten program will be provided by the Pemberton School District for the 2002-2003 school year.¹

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: April 15, 2002

Date of Mailing: April 16, 2002

¹ With respect to the ALJ's recommendation that the Department's procedures and rules be reviewed in order to avert future difficulties of the type giving rise to this appeal, the Commissioner notes that the Department is, in effect, already engaging in such review through the critical, comprehensive examination of "Abbott" implementation recently initiated by the State.

² Pursuant to *P.L. 2001, c. 130*, "Abbott" determinations are final agency actions appealable directly to the Appellate Division at the New Jersey Superior Court.