

BOARD OF EDUCATION OF THE TOWN OF :  
HARRISON, HUDSON COUNTY, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 NEW JERSEY STATE DEPARTMENT : DECISION  
 OF EDUCATION, :  
 :  
 RESPONDENT. :

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SYNOPSIS

Petitioning “Abbott” District appealed the Department’s determination of its 2003-04 “maintenance budget,” alleging that the regulatory definition of “maintenance budget” is invalid because it is inconsistent with the terms of the Supreme Court’s July 23, 2003 Order. The District further challenged the exclusion from its maintenance budget of the cost of two positions, approved but not filled in the 2002-03 school year, and the cost of providing health care coverage to 20 additional hourly paid cafeteria aides.

The ALJ initially determined that the OAL does not have jurisdiction to determine the validity of *N.J.A.C.* 6A:10-1.2, as such determination is solely within the jurisdictional purview of the Appellate Division or the Supreme Court. The ALJ next found the Department’s quantitative method of implementing its regulatory definition of “maintenance budget” to be inconsistent with the literal language of the regulation and that in the Supreme Court’s Order; he, therefore, denied Department adjustments reducing the District’s 2002-03 budget. With respect to salaries for two positions budgeted in 2002-03 but not filled, the ALJ concluded that, pursuant to the “maintenance” standard, programs, services and positions must have been actually provided or filled in 2002-03 in order to be funded in 2003-04. The ALJ, likewise, denied the District’s claim of funding for health care coverage for hourly cafeteria aides as the record did not contain documentation in support of such need.

The Commissioner adopted in part and rejected in part the Initial Decision. First, he concurred with the ALJ that the OAL does not have jurisdiction to determine the validity of the Department’s regulation. Next, however, the Commissioner, specifically found that the Department’s implementation of its regulation was proper. He recognized that, while it may be technically correct that merely looking at dollar amounts paid prior to June 30, 2003 may not necessarily reflect the actual costs of programs, *etc.*, it is, likewise, true that budgeted amounts do not necessarily reflect the costs of programs, *etc.*, provided. The Commissioner concluded that a methodology which begins by estimating the 2003-04 cost of providing the same programs, services and positions by looking at the actual cost of providing these for 2002-03 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. The Commissioner, therefore, restored the Department’s adjustments reducing the District’s spending funds by \$1,165,331 and \$889,380, respectively. The Commissioner concurred with the ALJ that sums budgeted for positions not filled in 2002-03 and health care coverage for hourly cafeteria aides were properly deducted from the District’s 2003-04 “maintenance” budget.

<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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October 20, 2003

OAL DKT. NO. EDU. 5494-03  
AGENCY DKT. NO. 195-6/03

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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 2003-2004 school year, and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of Harrison and those of the Department, along with the Department’s 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, the Commissioner determines to adopt in part and reject in part the Initial Decision of the OAL. Initially, the Commissioner notes that the Administrative Law Judge (ALJ) correctly recognizes that the OAL does not have jurisdiction to determine the validity of *N.J.A.C. 6A:10-1.2*, 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).

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.

In light of the above, the Commissioner finds the Department's implementation methodology entirely consistent with both the verbal standards articulated in the regulation and the Court's order. The ALJ's interpretation of "maintenance budget" on pages 10-11 of his

decision is hereby clarified to so reflect. It must also be remembered, that if funds provided pursuant to 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. The Commissioner, therefore, restores the Department's adjustments reducing spending funds for lines 11 and 15 by \$1,165,331 and \$889,380, respectively.

With respect to the sums budgeted in 2002-2003 for the salary of an athletic trainer (\$50,750) and that of a per-event athletic trainer (\$9,000), positions which were not filled in that year, the Commissioner concurs with the determination of the ALJ. Pursuant to the "maintenance" standard, programs, services and positions must have been actually provided or filled in 2002-2003 in order to be aided for 2003-2004, so that the \$59,750 approved and budgeted for these unfilled positions was properly deducted from the District's 2003-2004 "maintenance" budget.

Turning to the last issue in dispute herein, health coverage for hourly cafeteria aides, the Commissioner is in agreement with the ALJ that this item must be denied for lack of documentation in the record to support the District's assertion that this represents a non-discretionary expenditure.<sup>1</sup>

Accordingly, the Initial Decision of the OAL is adopted in part and rejected in part. The Commissioner directs that the District's need for supplemental aid be recalculated in

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<sup>1</sup> It is noted that the District, for the first time in its exceptions, attempted to submit supplementary documentation in support of this item. Submission of new evidence not presented at hearing in a party's exceptions is specifically prohibited by *N.J.A.C.* 1:1-18.4 and, consequently, the District's materials in this regard were not considered herein.

accordance with the above determinations. The instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2003

Date of Mailing: N/A

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<sup>2</sup> 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.