

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

SYNOPSIS

Petitioning “Abbott” District appealed the Department’s determination of its 2003-04 preliminary “maintenance budget,” alleging that the Department’s review was not in accordance with the July 23, 2003 order of the Supreme Court. The District challenged the inefficiencies identified by the respondent in noninstructional expenditures, including a grant writer’s position, the business cost center and purchased professional services for special education. The District also challenged the Department’s determination of certain maintenance calculations.

The ALJ found that the OAL does not have jurisdiction to determine the validity of *N.J.A.C. 6A:10-1.2*. The ALJ also concluded that the Department properly determined inefficiencies with the grant writer’s position and the business cost center, noting that the latter reduction must take into account any superceding constraints of contractual and tenure rights. Finally, the ALJ found that respondent’s maintenance calculations which incorporate Consumer Price Index (CPI) adjustments of 2.11 % and an anticipated cost increase of 7 % for utilities should be upheld.

The Commissioner concurred with the ALJ’s findings and conclusions and adopted the Initial Decision.

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.
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October 20, 2003

OAL DKT. NO. EDU 5499-03  
AGENCY DKT. NO. 203-6/03

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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 2003-04 school year, and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties’ exceptions and replies 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 initially concurs with the Administrative Law Judge (ALJ) that the OAL does not have jurisdiction to determine directly or indirectly 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). Even if it were to be assumed, *arguendo*, that the OAL has jurisdiction to consider petitioner’s argument regarding the validity and applicability of the regulation at issue, the Commissioner agrees with the ALJ that the Department’s definition of

“maintenance budget,” as detailed in *N.J.A.C.* 6A:10-1.2, does not differ in any appreciable way from the Supreme Court’s definition of that term contained in its Budget Order of July 23, 2003.

Further, with respect to the identified inefficiencies in petitioner’s non-instructional expenditures, including the grant writer position, the business cost center and purchased professional services for special education, based on the record before him and the credibility assessments of the ALJ, *N.J.S.A.* 52:14B-10(c), the Commissioner accepts the ALJ’s factual findings and determines that her analysis and legal conclusions are consistent with the Supreme Court’s Order of July 23, 2003, as well as the Department’s regulatory amendments adopted on August 22, 2003.<sup>1</sup> The Commissioner additionally concurs with the ALJ that respondent’s maintenance calculations incorporating Consumer Price Index (CPI) adjustments of 2.11 % and an anticipated cost increase of 7 % for utilities should be upheld.

Accordingly, the Initial Decision is adopted for the reasons expressed therein.<sup>2</sup>

IT IS SO ORDERED.<sup>3</sup>

#### COMMISSIONER OF EDUCATION

Date of Decision:      October 20, 2003

Date of Mailing:         N/A

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<sup>1</sup> The Commissioner notes that the individuals involved in this business cost center are *not* covered by a collective bargaining agreement. (Initial Decision at 10) To the extent there is a contractual obligation to pay these individual administrators’ salaries, the Commissioner clarifies that the Department is not necessarily obligated to provide funding for the increase where it has been determined to be inefficient, as it has herein. (*Ibid.*)

<sup>2</sup> The Commissioner so determines, based upon the proofs brought to *this* record, while acknowledging that the presentation of such evidence may have been disadvantaged by both a Court Order to expedite proceedings and the unavailability of the Comprehensive Annual Financial Report (CAFR) until November 2003. In any event, beyond his determination herein, the Commissioner underscores the availability of a mechanism for Abbott districts to address needs, arising during the year due to unanticipated expenditures or unforeseen circumstances, for additional resources to implement Department-approved programs and services. *N.J.A.C.* 6A:10-3.1(g).

<sup>3</sup> Pursuant to *P.L.* 2003, *c.* 22, “*Abbott*” determinations are final agency actions appealable directly to the Appellate Division of the New Jersey Superior Court.