

BOARD OF EDUCATION OF THE :
TOWNSHIP OF PEMBERTON, :
BURLINGTON COUNTY, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

NEW JERSEY STATE DEPARTMENT :
OF EDUCATION, :

RESPONDENT. :

SYNOPSIS

Petitioning “Abbott” Board of Education claimed the Department was required to provide full State funding for its 2003-04 early childhood education program. The Department had provided Early Childhood Program Aid (ECPA) and Preschool Expansion Aid (PSEA) in accordance with prescribed formulas, but the district contended that additional State monies were required to fully fund the difference between the total of these aids and the approved preschool budget.

The ALJ concluded that the Department correctly calculated the district’s ECPA and PSEA, but that this did not end the inquiry. The ALJ concluded that Court, Department and legislative pronouncements, taken together, require that the district’s preschool plan be funded entirely by the State, subject to legislative appropriations.

The Commissioner concurred that ECPA and PSEA were correctly calculated, but rejected the conclusion that full State funding of preschool program was required regardless of other funds available in the district budget. The Commissioner held that the State’s obligation is to ensure that sufficient funds are available to fully support the district’s approved early childhood education plan, with additional State monies to be provided where formula aids and local resources are together inadequate for this purpose. Petition 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 2203-03
AGENCY DKT. NO. 106-3/03

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Exceptions were filed by the Department of Education (Department), as were replies by the Board of Education (Board), in accordance with the provisions of *N.J.A.C.* 1:1-18.4.

In its exceptions, the Department urges the Commissioner to limit his adoption of the Initial Decision to finding that the Department correctly calculated the amount of the Board's Preschool Expansion Aid (PSEA) for the 2003-04 fiscal year, and to reject Administrative Law Judge (ALJ) Dubin's addressing of broader issues in a matter pled solely as an appeal of the Department's February 26, 2003 PSEA determination. The Department contends that the February 26 determination under appeal was confined to the issue of PSEA and "neither calculates nor advises [the Board] of the amount of Additional *Abbott v. Burke* State aid that it will receive" so that any

assertion by the Board regarding such aid is “entirely inappropriate” in the present proceeding. (Department’s Exceptions at 1-3, quotation at 3)

The Department further contends that the ALJ erred in relying on the Governor’s Budget Message for FY ’04 in concluding that the Board’s approved Early Childhood Plan must be fully funded with State aid, since the FY ’04 Appropriations Act, adopted by the Legislature and signed by the Governor as *P.L. 2003, c.122*, expressly revised the earlier Governor’s Budget Message language as cited in the Initial Decision.

The Department urges:

Notably, the Governor’s Budget Message for FY04 provided: “The amount appropriated hereinabove for Additional *Abbott v. Burke* State Aid will provide additional resources to ‘Abbott districts’ to meet the State’s obligation to fully fund parity and *the approved early childhood operational plans.*” (Emphasis added). The FY04 Appropriations Act provides: “The amount appropriated hereinabove for Additional *Abbott v. Burke* State Aid will provide additional resources to ‘Abbott districts’ to meet the State’s obligation to fully fund parity *and approved ‘Abbott’ preschool expansion.*” *L. 2003, c. 122.*

Here, the Legislature revised the language contained in the Governor’s Budget Message to clarify that, contrary to Judge Dubin’s interpretation, the Department is not required to ensure that Pemberton’s approved Early Childhood Plan is fully funded with State aid. By purposefully deleting the words “early childhood operational plans” from the Governor’s Budget Message and replacing those words in the FY04 Act with “‘Abbott’ preschool expansion,” the FY04 Act unequivocally demonstrates that, while the Department must ensure that Pemberton’s “approved ‘Abbott’ expansion” is fully funded with State aid, the Department is not required to ensure that Pemberton’s approved “early childhood operational plan” is fully funded with State aid. Moreover, this revision is consistent with the method, established in the FY04 Act, by which Preschool Expansion Aid is calculated: “funding the increase in the approved budgeted costs from 2001-2002 to 2003-2004 for the projected expansion of preschool programs in “Abbott districts.” *L. 2003, c. 122. (Id. at 4-5)*

This interpretation, the Department avers, is consistent with the Court's language concerning Additional *Abbott v. Burke* Aid. The Department argues:

In *Abbott v. Burke*, 153 N.J. 480 (1998), the Supreme Court opined, “the Commissioner may, before seeking new appropriations, first determine whether funds within an existing school budget are sufficient to meet a school’s request for a demonstrably needed supplemental program.” *Id.* at 518. The Court further opined, “[u]nderlying the Commissioner's proposal for whole-school reform, early childhood programs and supplemental programs, is the clear commitment that *if there is a need for additional funds*, the needed funds will be provided or secured.” *Ibid.* (Emphasis added).

The above-quoted language demonstrates that the Supreme Court intended for the Commissioner to ensure that the early childhood programs are fully funded, however, the Commissioner could first determine whether funds within an existing school budget are sufficient to meet a school’s request for such programs. Because local tax levy is included [in] the budget, the Commissioner can consider those funds as well as other revenue supporting the budget when determining the amount of Additional *Abbott v. Burke* State aid, if any, that a district needs. (*Id.* at 6)

In reply, the Board counters that the ALJ did *not* address issues outside the scope of the pleadings, since the Petition of Appeal not only challenged the amount of PSEA awarded the Board, but also the Department’s failure to fully fund the Board’s approved preschool program.¹ (Board’s Reply Exceptions at 2-4) The Board further objects to the Department’s protestation over the scope of the ALJ’s ruling, noting that the Department itself raised the issue of full funding by arguing, in its initial brief in support of a motion for summary decision, that “‘as a matter of law,’ while the State must ensure that Pemberton’s preschool program is fully funded, there is not a concomitant obligation that such funding be provided by the State,” and that the Department “sought summary decision based on the claim that there was no State obligation to fully fund the

¹ The Board points to its claim for relief, and also to ¶¶ 4, 7, 11, 13, 14, 18 and 20 of the Verified Petition, noting that while PSEA is mentioned, “the gravamen of [these] claims is that the State must fully fund the DOE-approved preschool program with State funds.” (Board’s Reply Exceptions at 3-4, quotation at 3)

DOE-approved preschool program with State funds; the [Department] cannot now be heard to complain that the ALJ ruled adversely to the [Department] on the very ‘matter of law’ asserted by the [Department].” (*Id.* at 4-5, quoting Department’s *Phillipsburg*² Letter Brief of May 13, 2003 at 8) Neither, the Board alleges, can the Department claim that the Initial Decision wrongly addresses yet-to-be-determined Additional *Abbott v. Burke* Aid; this claim “disingenuously misconstrues” the Initial Decision, which did *not* find that the Board was owed Additional *Abbott v. Burke* Aid, but rather concluded that the State had an obligation, to be met however the State deemed fit, to provide full State funding for approved preschool programs, subject to Legislative appropriations. (*Id.* at 5-6, quotation at 6) The Board urges that deferral of the question of full State funding makes no sense as a matter of public interest, since the question will only recur later if not resolved here, where it has already been fully briefed and considered. (*Id.* at 6-7)

The Board next proffers that the Supreme Court’s decision in *Abbott V, supra*, nowhere intimates that preschool programs should or could be funded in part by local tax share; indeed, the Board avers, the Court’s decision was based on the recommendations of the Honorable Michael King, P.J.A.D., sitting as the remand court, and, while the Court disagreed with Judge King regarding full-day preschool, it “did not take issue with his conclusion that preschool would be funded by ECPA, T&E, parity funds and the incremental State funding needed to fully fund the preschool program.” (Board’s Reply Exceptions at 7-10, quotation at 8) Finally, the Board offers the Office of Legislative Services’ analysis of the Department’s FY ’03 budget, explaining the

² As noted in the Initial Decision at 2, the parties in this matter agreed to incorporate and rely upon submissions and arguments made in the matter of *Board of Education of the Town of Phillipsburg, Warren County, v. New Jersey State Department of Education*, OAL Dkt. No. EDU 3423-03, Agency Dkt. No. 104-3/03. As indicated below, that matter was decided by the Commissioner on September 25, 2003.

purpose of PSEA as a new line item funding the increase in costs between 2001-02 and 2002-03 for programs which had been, “[u]p until this time***funded through a combination of Early Childhood Program Aid and Additional *Abbott v. Burke* Aid.” This excerpt, the Board opines, “reflects the Legislature’s clear understanding that prior to the 2001-02 school year, the State had fully funded preschool with State funds and that PSEA was to ensure full state funding for any increase in 2002-03 over 2001-02. Thus, when the FY ’04 Appropriations Act provides that PSEA in 2003-04 is to fund the difference between the 2002-03 program and the 2003-04 program, the evident legislative intent is to continue the full State funding in effect prior to the 2001-02 school year -- and extended into the 2002-03 school year by PSEA -- into the 2003-04 school year.” (*Id.* at 9-10)

Finally, the Board contends that the Department errs in claiming that the language of the Appropriations Act as ultimately adopted by the Legislature supports its position. According to the Board, the Initial Decision does not, as the Department alleges, rely exclusively on the earlier Governor’s Budget Message, but rather places that message in the context of continuing expressions of legislative concern, the *Abbott* decisions, and the Department’s repeated public pronouncements. (*Id.* at 10-11)

Additionally,

[t]he FY [’04] Appropriations Act still links the Additional *Abbott v. Burke* State Aid to the “State’s obligation” to fully fund parity and approved *Abbott* preschool expansion. Significantly, the language is not limited to the formula for funding approved preschool expansion *aid*, but rather to the funding of preschool expansion. Moreover, the FY Appropriations Act does not define what the Legislature meant by the State’s obligation so the Commissioner must “employ extrinsic aids, such as legislative intent or prior precedent, to interpret the language at issue.” *In re Passaic County Util. Auth.*, 164 N.J. 270, 300 (2000) (citation omitted). (*Id.* at 11-12)

Thus, the Board concludes, “properly construed under governing legal principles,” the FY ’04 Appropriations Act not only fails to support the Department’s position, but actually “reinforces the correctness” of the Initial Decision. (*Id.* at 12)

Upon his own review and consideration, as he did in the matter of *Board of Education of the Town of Phillipsburg, Warren County, v. New Jersey State Department of Education*, decided on September 25, 2003, subsequent to issuance of the Initial Decision herein, the Commissioner first concurs with the ALJ and the Board that the instant matter is not limited strictly to the question of whether the Department correctly calculated the amount of PSEA due the district for 2003-04. Notwithstanding that the Petition of Appeal was, in fact, pled largely in terms of PSEA as claimed by the Department, the Commissioner finds it in the best interest of both the parties in this matter and Abbott districts generally to decide the broader question squarely underlying the Board’s specific allegations, that is, the question of whether Court, legislative and Department pronouncements, alone or in combination, require that the entire cost of approved Abbott preschool programs be funded, dollar for dollar, exclusively by the State.

The ALJ, concurring with the Initial Decision in *Phillipsburg, supra*, answered this question in the affirmative based on legislative intent as expressed through the Governor’s FY ’04 Budget Message, read in light of 1) Court language recognizing preschool as a critical component of Abbott reform efforts although not a constitutional mandate and acknowledging the statutory endorsement of the link between preschool and later educational achievement; 2) prior enactments reflecting the Legislature’s concern

with fully funded early childhood education in Abbott districts; and 3) Department pronouncements expressing clear commitment to full funding of preschool programs.

The Commissioner, however, does not concur with the *Phillipsburg* analysis. With respect to the requirements of the Court, nowhere in the *Abbott* decisions is there a suggestion, let alone a directive, that approved Abbott preschool programs must be funded *exclusively* by the State. On exception, the Board argues implicit endorsement of its position by the Court's silence in response to Judge King's statement that preschool would be funded by ECPA, T&E, parity funds and "the incremental State funding needed to fully fund the preschool program," with no mention of local revenues. (Board's Reply Exceptions at 8-9) Similarly, based on the Board's earlier arguments, the ALJ cites to the Court's concern with municipal overburden and Abbott districts' inadequate tax bases and to its language referencing the State's "clear commitment that if there is a need for additional funds, the needed funds will be provided or secured." (Initial Decision at 5) These statements, however, do not even on their face require State funding regardless of need. Rather, they provide for the State to ensure, with additional aid if necessary, that sufficient funds are available to the district to fully fund its preschool program, that is, to ensure that any gap remaining after receipt of statutory formula aids will be addressed by the State *to the extent that need exists* because funds otherwise available to the district are insufficient to fully support the approved program. This reading is consonant not only with the Court's actual language and concern with local taxation capabilities, but also with its overall recognition that, while adequate funding is critical to achievement of a thorough and efficient system of public education in Abbott districts, such funding is a shared responsibility between the State and the local district.

Taken within the proper framework, then, as in *Phillipsburg*, the proffered Department pronouncements regarding “full funding” of Abbott preschool programs cannot be viewed as promises or expectations of dollar-for-dollar State funding regardless of resources available in the local district budget. Rather, they must be understood as reflections of the Department’s commitment, and recognition of its obligation, to provide or secure additional State funds to the full degree necessary to support approved programs where local budgetary resources, including formula aids, local levies and monies realized through economies, efficiencies and reallocations, are found inadequate for this purpose. Indeed, this is the only interpretation consistent with sound educational policy, which must recognize *both* the critical importance of ensuring that approved Abbott preschool programs are supported by sufficient funds *and* the necessity to allocate State and local resources as efficiently and effectively as possible in meeting the shared responsibility for education in Abbott districts.

Finally, as in *Phillipsburg*, the Commissioner cannot ignore that the Legislature has now spoken definitively on the question posed by this appeal. Even granting, *arguendo*, that prior Legislatures provided for full State funding of Abbott district early childhood operational plans during the first years of their development, and that the Governor’s Budget Message for FY ’04 appeared to continue that pattern, the current Legislature has acted deliberately and decisively to clarify that its intent for the FY ’04 budget year is to provide additional funding for *only* those costs directly associated with approved program expansion, not for the entire early childhood operational plan. In that regard, it is noted that there is no question, nor does the Board

except to the ALJ's conclusion, that the Department correctly calculated the district's PSEA in accordance with the prescribed legislative formula.

Accordingly, for the reasons set forth above, the Initial Decision of the Office of Administrative Law is rejected except insofar as it concludes that the Department correctly calculated petitioner's ECPA and PSEA for 2003-04. The Petition of Appeal, therefore, is dismissed in its entirety.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: September 25, 2003

Date of Mailing: September 26, 2003

³ 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.