

562-03

BOARD OF EDUCATION OF THE :
CITY OF PASSAIC, :
PASSAIC 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 fund full cost of expansion of the district’s preschool program from 2001-02 to 2002-03, and that the Department’s methodology for reduction of initial Preschool Expansion Aid award (because enrollment was less than projected) improperly left the district with unfunded costs and forced its use of surplus to finish the 2002-03 school year. Petitioner had additionally sought a determination that the district could not be compelled to expend surplus to a level less than 2%, but attempted to withdraw that request at the close of proceedings.

The ALJ found that the *Abbott* Court mandate did not require full State funding of preschool programs regardless of need, and that the Department’s per-pupil method of reducing aid for less-than-projected enrollment was a rational means of adjustment. Denying petitioner’s request to withdraw the question because it had at that point been fully heard and briefed, the ALJ also found that Abbott districts can, under appropriate circumstances, be directed to allocate surplus to a level less than 2%.

The Commissioner concurred with the ALJ’s conclusions, additionally clarifying that the Department’s per-pupil reduction methodology was consistent with legislative intent as expressed in the FY’03 Appropriations Act. 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.
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September 25, 2003

OAL DKT. NO. EDU 3424-03
AGENCY DKT. NO. 105-3/03

BOARD OF EDUCATION OF THE :
TOWN OF PASSAIC, :
PASSAIC COUNTY, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. In accordance with *N.J.A.C.* 1:1-18.4, timely exceptions were filed by the Board of Education (Board), as were replies by the Department of Education (Department).¹

In its exceptions, which reference prior briefs as well as arguments made in the concurrent matter of *Board of Education of the Township of Phillipsburg, Warren County, v. New Jersey State Department of Education*, Agency Dkt. No. 104-3/03, OAL Dkt. No. 3423-03,² the Board first urges the Commissioner to reject the Administrative Law Judge (ALJ)'s conclusion that approved Abbott preschool programs need not be funded exclusively by the State. The Supreme Court's decision in *Abbott V, supra*, the Board opines, nowhere envisions that preschool programs would or should be partly funded by local tax share; indeed, according to the Board, the Court's decision was based

¹ The Board additionally made a submission in response to the Department's reply. However, because applicable rules make no provision for this submission, the Commissioner does not consider it herein.

² Subsequently decided by the Commissioner on September 25, 2003.

on the recommendations of the Honorable Michael King, P.J.A.D., and, while the Court disagreed with Judge King regarding full-day preschool, it did *not* take issue with his conclusion that it was the State's obligation to fully fund preschool in Abbott districts. (Board's Exceptions at 3-4) However, the Board contends, even if the Commissioner were to find that the *Abbott* decisions do not require full State funding, the FY '03 Appropriations Act makes it clear that the Legislature "intended that preschool expansion aid would provide full State funding for the expansion of the approved preschool program in the 2002-03 school year over the 2001-02 approved program," so that the Department's actions, and the Initial Decision supporting them, are directly contrary to a Legislative mandate which the Initial Decision fails even to consider. (*Id.* at 4-5, quotation at 5) Finally, the Board argues, although the ALJ did not address the issue despite its having been briefed, the Department itself "repeatedly recognized" the State's legal obligation to provide full State funding for approved preschool programs in numerous memoranda to *Abbott* districts. (*Id.* at 5-6, quotation at 5)

The Board further objects to the ALJ's acceptance of the Department's utilization of a per-pupil formula for calculating adjustments to Preschool Expansion Aid (PSEA), contending that such acceptance is "contrary to fact, law and budgeting and funding practices relating to the Abbott districts." (*Id.* at 6) The Board first posits that Department-approved preschool budgets are *not* constructed on a per-pupil basis, as stated by the ALJ, but are instead derived by totaling the cost of all Department-approved items, including fixed costs; the per-pupil amount is then obtained by dividing the total budget by the projected number of enrolled students. Thus, the Board concludes, using the per-pupil amount to adjust PSEA necessarily leads to reductions that exceed the

actual savings arising from less-than-anticipated enrollment, thereby violating the legislative mandate (FY '03 Appropriations Act) that any adjustments to PSEA be based on “actual need;” in the Board’s case, this methodology led to an undisputed shortage of over a million dollars in the amount actually needed to fund the preschool program for the remainder of the 2002-03 school year, rendering unsustainable the ALJ’s characterization of adjusted PSEA as a “close approximation” or “fair estimate.” (*Id.* at 6-9) Moreover, according to the Board, budgeting in Abbott districts, and funding by the Department, “is always based on the District’s projection and the Department’s determination of actual need during the school year,” since actual *expenditures* will not be known for certain until after the annual audit, at which time the Department makes the necessary adjustments if State funding exceeds actual need. (*Id.* at 9) The Legislature is well aware of this situation, the Board argues, and for this reason it elected to base PSEA adjustments neither on estimates so as potentially to leave districts with shortfalls, nor on actual audited costs so that funding needs for the 2002-03 school year would not be determined until well after the school year had ended and such needs were moot; instead, it required the Department to “make adjustments based on the actual need projected by the District and then to take back any preschool expansion aid that turns out at the end of the school year not to be actually needed.” (*Id.* at 9-12, quotation at 11) Indeed, the Board notes, the Initial Decision fails even to recognize the “obvious consequence of its reasoning,” that is, the necessity for an adjustment, either up or down, following determination of actual costs through the annual audit. (*Id.* at 12)

Lastly, the Board excepts to the Initial Decision’s “gratuitous adjudication” of the question of Department’s authority to compel the District to expend

undesigned fund balance (surplus) so as to reduce it to less than 2%, an issue that was “not presented by [the] appeal and, therefore, was unnecessary for its resolution.” During hearing, the Board explains, undisputed testimony established that allocations from surplus reducing it to .76 % were voluntarily undertaken by the Board in response to the Department’s reduction in PSEA monies, but that the Department did not compel such allocations. (*Id.* at 12-14, quotation at 12) Thus, the Board avers, it attempted to withdraw the question of Department authority to compel expenditure of surplus below 2%, but the ALJ erroneously considered it nonetheless:

The issue of when and to what extent the Department may compel reallocations by a District should be decided on a complete record that squarely presents this issue for the proper resolution of an appeal.***The initial decision’s conclusion that broad reallocation authority may be exercised in these circumstances resolves an issue in the wrong case at the wrong time. Before such a broad issue is determined in an administrative appeal, there should be a full and complete record showing that the District was compelled to reallocate and the effect on the District of that compelled reallocation. This is not the proper case or record to decide issues that could affect all Abbott districts who are compelled to reallocate undesigned general fund balance below 2% in the future. Therefore, Petitioner respectfully requests that the Commissioner reject the initial decision’s gratuitous resolution of an issue not properly before that tribunal. (*Id.* at 13-14)

In reply to the Board’s exceptions, the Department first argues that the ALJ’s conclusion with respect to State funding for approved preschool programs is contrary to neither the *Abbott* rulings nor any statutory or regulatory requirement. Indeed, the Department contends, *Abbott* does not require provision of additional State aid if a district has other revenue sufficient to be reallocated, but requires instead “an analysis of [the District’s] budget with a view toward redirecting or reallocating expenditures and funds,” with additional aid to be provided only if needed. (Department’s Reply Exceptions at 3) The Department further urges adoption of the

ALJ's conclusion that the Department's method of adjusting the District's PSEA award was reasonably based, since any adjustments prior to determination of actual costs through audit, that is, during the current fiscal year, must necessarily be made on estimates, and the Department's method was based on uniform, quantifiable measures for determining "documented need" as directed by the Legislature. (*Id.* at 3-5) Finally, the Department objects to the Board's stance with respect to the propriety of determining the question of the Department's authority to appropriate undesignated fund balance (surplus) below 2%. The Department notes that this issue was identified at prehearing and addressed in both briefs and testimony, and that the Board did not attempt to withdraw it until after it had been fully litigated; thus, the Board is "disingenuous" in now asserting that the issue was not presented on appeal and a full record not developed. The Department also finds "incredible" the Board's claim that it voluntarily reduced its surplus below 2%, since this "was one of petitioner's main arguments as to why the reduction [in PSEA] should not be made, and the District certainly did not 'volunteer' to utilize its undesignated fund surplus balance for the pre-school program." The Initial Decision should be adopted, the Department contends, because the question of Department-directed reallocation of surplus below 2% will surely recur, and its determination here, following full hearing and briefing, will conserve time and resources, as well as provide guidance for future litigation. (*Id.* at 5-7, quotation at 6)

Upon his own review and consideration, the Commissioner initially concurs with the ALJ that the *Abbott* Court did not categorically require full State funding of preschool programs regardless of need. As set forth in *Board of Education of the Town of Phillipsburg, Warren County, v. New Jersey State Department of Education*,

decided by the Commissioner on September 25, 2003, at 16-17,³ the *Abbott* decisions nowhere suggest, and certainly do not direct, that approved Abbott preschool programs must be funded *exclusively* by the State. Rather, they require the State to ensure, with additional aid where necessary, that sufficient monies are available to an Abbott district to fully fund its preschool program, that is, to provide or secure additional State funds to the full degree necessary to support approved programs where local budgetary resources are found inadequate for this purpose. Similarly, Department pronouncements regarding “full funding” of Abbott preschool programs must be understood as a reflection of, and commitment to, this shared obligation, recognizing both the critical importance of early childhood education in Abbott districts and the necessity of allocating resources efficiently and effectively in providing it. (*Id.* at 17)

The Commissioner agrees with the Board, however, that the central question in this matter cannot be resolved without express consideration of the FY’03 Appropriations Act, which establishes the requirements of the Legislature for PSEA for the 2002-03 school year. The Board contends that, even if the Commissioner were to find that the Court did not require full funding of preschool expansion, he cannot ignore statutory language demonstrating that the Legislature *did*. Specifically, the Board avers, the Legislature required that any adjustment to PSEA be based on “actual need,” so that the Department’s adjustment methodology, having resulted in less money than was actually needed to finish out the school year, cannot be sustained.

³ See also the concurrently decided matters of *Board of Education of the Township of Neptune, Monmouth County v. New Jersey State Department of Education*; *Board of Education of the Township of Pemberton, Burlington County v. New Jersey State Department of Education*; and *Board of Education of the City of Millville, Cumberland County v. New Jersey State Department of Education*.

The pertinent portion of the Act provides:

The amount appropriated hereinabove as Abbott Preschool Expansion Aid is for the purpose of funding the increase in the approved budgeted costs from 2001-2002 to 2002-2003 for the projected expansion of preschool programs in “Abbott districts.” Payments of Abbott Preschool Expansion Aid shall be based on documented expansion of the preschool program. Upon the Commissioner of Education’s request, “Abbott districts” will be required to provide such supporting documentation as deemed necessary to verify that the actual expansion in the preschool program has occurred in the 2002-2003 fiscal year. Such documentation may include enrollment and attendance data that may be subject to an audit. Appropriate adjustments to a district's Abbott Preschool Expansion Aid amount may be made by the commissioner based on actual need. (Exhibit C-1, pages 52-53)

The above-quoted language, in the Commissioner’s view, does not support the Board’s contention. In the context of the full passage, it is clear that “actual need” refers not, as the Board argues, to a dollar-for-dollar match between State aid and the district’s unaudited program costs, but to the extent to which the district’s documented expansion differs from its projected. Quantifying, for current-year aid adjustment purposes, the dollar amount associated with that difference by means of a per-pupil cost, derived for each district by dividing its projected budget by its number of projected pupils, is a reasonable, objective and consistent Statewide methodology for carrying out the Legislature’s directive; indeed, in most cases, it likely *would*, as found by the ALJ, result in a fair approximation of actual program expansion costs.⁴ That the Board in this instance experienced so large a drop in aid based on the Department’s determination of “actual need” was due *entirely* to the extraordinary difference between the district’s initial enrollment projection (1917) and its actual documented enrollment (1038); such

⁴ The Commissioner here notes that, contrary to the Board’s representation on exception, the ALJ does not misunderstand or mischaracterize the manner in which preschool budgets are constructed in Abbott districts. Initial Decision at 5.

anomaly, however, does not render the Department's method of adjustment inherently infirm, improper, or in violation of law.

Similarly, there is no violation of the Act in the Board's being required, whether "voluntarily" or by Department direction, to expend surplus funds in order to complete its preschool program for the 2002-03 school year.⁵ As noted by the Department in its brief before the ALJ, school districts, including Abbott districts, have no statutory or regulatory entitlement to retain unreserved, undesignated balances through the end of a school year; indeed, the very purpose of surplus is to provide an ability to meet unforeseen costs arising during the course of the year. (Department's Brief at 11) Within an appropriate context, such as when dealing as here with a dedicated, current-year State aid entitlement not structured as a dollar-for-dollar match, use of reserve funds--even to the point of bringing the remaining surplus balance below 2%--to address a gap between aid received and targeted program costs is entirely appropriate, notwithstanding that such funds may have derived from the general budget supported in part by local taxes. To the extent that current-year application of surplus may leave a district with less money to direct toward the following year's budget, or be construed, as it is by the Board herein, as an abrogation of the State's responsibility for "full" funding, the overall framework for State support of Abbott districts—the larger context within which the current matter must be viewed—acts to ensure that district students will not be deprived of the educational entitlements guaranteed them by the New Jersey Legislature and Constitution.

⁵ The Commissioner concurs with the ALJ and the Department that this issue is appropriately decided herein.

Accordingly, as clarified above, the Initial Decision of the Office of Administrative Law is adopted as the final decision in this matter. The actions of the Department are sustained and the Petition of Appeal dismissed.

IT IS SO ORDERED.⁶

COMMISSIONER OF EDUCATION

Date of Decision: September 25, 2003

Date of Mailing: September 26, 2003

⁶ Pursuant to *P.L.* 2002, c. 38, “*Abbott*” determinations are final agency actions appealable directly to the Appellate Division of the New Jersey Superior Court.