

OAL DKT. NO. EDU 4095-03
AGENCY DKT. NO. 199-6/03

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| BOARD OF EDUCATION OF THE | : | |
| CITY OF ASBURY PARK, MONMOUTH | : | |
| COUNTY, | : | |
| | : | |
| PETITIONER, | : | COMMISSIONER OF EDUCATION |
| | : | |
| V. | : | DECISION |
| | : | |
| NEW JERSEY STATE DEPARTMENT | : | |
| OF EDUCATION, | : | |
| | : | |
| RESPONDENT. | : | |
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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 determine 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, 2003.¹

With respect to the identified inefficiencies in petitioner's noninstructional expenditures, including the supervisors of instruction,² legal fees and the employment of non-certificated staff, based upon 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 his 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.

However, the Commissioner does not concur with the ALJ that a Consumer Price Index (CPI) adjustment of 3 percent, rather than 2.11 percent, should be applied to petitioner's 2003-04 budget because "Asbury Park is closer to New York and northern New Jersey than to Philadelphia and southern New Jersey ***" (Initial Decision at 19), where *N.J.S.A.* 18A:7F-3 specifically defines CPI as:

the average annual increase, expressed as a decimal, in the consumer price index for the New York City and Philadelphia areas during the fiscal year preceding the prebudget year as reported by the United States Department of Labor.

Thus, in accordance with statute, the CPI calculation in the maintenance budget is an average of the CPI rate for the New York/Northern New Jersey area *and* the Philadelphia/Southern New Jersey area. Therefore, notwithstanding any testimony to the contrary, the Commissioner finds that the Department properly relied upon the 2.11 percent CPI rate calculated pursuant to statute.

¹ Consequently, pursuant to *N.J.A.C.* 1:1-14.10(j), the Commissioner adopts the ALJ's Interim Order of September 4, 2003.

² It is noted that petitioner has withdrawn its appeal relative to this inefficiency.

Finally, it is not clear on this record that the Department, in fact, “double counted” the District’s preschool expansion aid adjustment of \$469,662, as found by the ALJ at page 17 of the Initial Decision. In this connection, the Department argues that:

[N]o documentation was provided to show that this amount was included in any other portion of the revenue section of Asbury Park’s budget nor was any calculation performed on the record to demonstrate that this was the case. There simply is no basis for this proposition on the record beyond Mr. Henry’s belief that the adjustment had been duplicated, thus, overstating the district’s revenue and lowering its overall “Need for Supplemental Aid.” (Department’s Exceptions at 6-7)

Therefore, mindful of the District’s burden on this issue, and without any evidence to the contrary, the ALJ’s finding in this regard is rejected.³

Accordingly, the Initial Decision is adopted with modification, as set forth herein.⁴

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2003

Date of Mailing: N/A

³ The Department also notes, by way of correction to the Initial Decision’s Exhibit List that it did not enter into evidence Exhibits R-3 through and including R-12, or R-26. The decision is so modified.

⁴ 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 until November 2003, which will reveal the District’s true audited fund balance and available revenue, if any, as of June 30, 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).

⁵ 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.

