

BOARD OF EDUCATION OF THE :
CITY OF VINELAND, :
CUMBERLAND COUNTY, :
PETITIONER, :
V. :
NEW JERSEY STATE DEPARTMENT :
OF EDUCATION, :
RESPONDENT. :
_____ :

COMMISSIONER OF EDUCATION
DECISION

SYNOPSIS

Petitioning Board of Education challenged the Department’s denial of funding for certain items in its revised 2007-2008 Preschool Operational Plan. The Department determined that the food service expenditures for petitioner’s preschool program should be placed in petitioner’s general food service budget, within its “Fund 50” enterprise fund, which was established for program activities that can generate income to offset costs. Petitioner asserts that the Department acted in an arbitrary manner in denying the food service costs, as such costs were allowed in 2006-2007.

The ALJ found that: the Department’s directive to place preschool food service expenses in the “Fund 50” was appropriate given the nature of the district’s food service operation and the purpose of the enterprise fund; the Department did not act in an arbitrary manner in its method of funding the preschool food program; and the principles of estoppel and waiver do not generally apply to government agencies. The ALJ concluded that the District failed to meet its burden to prove that additional state aid is necessary for its in-district preschool food program, and dismissed the petition.

The Commissioner concurred with the ALJ’s findings, noting that the issues in this matter were already addressed and well articulated in a previous Commissioner’s decision dated April 15, 2005. The Initial Decision of the OAL was adopted as the final decision, and the 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.
--

April 12, 2007

OAL DKT. NO. EDU 648-07
AGENCY DKT. NO. 41-2/07

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

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

This matter was precipitated by respondent Department of Education's (Department) denial of the petitioning school board's requests for early childhood funds for food service salaries, benefits and other operating costs, and petitioner's appeal of same. The Department determined that the food service expenditures for petitioner's preschool program should be placed in petitioner's general food services budget, within its "Fund 50," which was established for program activities that can generate income to offset costs. The Commissioner concurs with the Administrative Law Judge (ALJ) and the Department that such allocation is appropriate for reasons already articulated in the Commissioner's April 15, 2005 decision entitled *Board of Education of the City of Vineland v. New Jersey Department of Education*, OAL Dkt. No. EDU 660-05, Agency Dkt. No. 41-2/05.

In that decision, the Commissioner articulated two reasons why it was reasonable for the Department to determine that food service expenses for pre-school programs should not be segregated from food service expenditures for the entire Vineland school district:

(1) School district budgets include a differentiated auxiliary fund (Fund 50) expressly for those programs such as food services which generate both revenue and expenditures, with the expectation that, where a program contributes revenues, associated costs will also be handled through the fund, the goal being to reach eventual self-sufficiency; and 2) the Board's food service operations are district-wide, so that there is no practical or budgetary reason to segregate preschool food service costs from those for K-12.

Board of Education of the City of Vineland, supra, at 3.

Thus, the Commissioner determined that because of the district-wide nature of petitioner's food service operation and the existence of the enterprise fund, such food service needs as staffing should be funded and assessed within the context of the district's general budget.

Petitioner argues now, as it did in 2005, that it is unfair for the respondent to fund food service programs of private early childhood education providers, but to decline to allocate to petitioner extra food service funds specifically dedicated to petitioner's early childhood program. The Commissioner expressly rejected that argument in 2005, because private early childhood providers are not similarly situated to petitioner as regards the above articulated reasons for denying petitioner separate funding for food services. More specifically, many such private providers do not belong to larger organizations with food service operations from which they may receive support, and their frequently smaller size prevents them from having the benefit of economy of scale.

In addition, the Commissioner notes that the record in this case indicates that private providers must participate in the USDA's Child and Adult Care Food Program (CACFP) (Exhibit P-7).¹ Department witness Karin Garver testified (hearing transcript, page 124) that membership in the CACFP imposes the obligation upon private providers to show a stable funding source. This requirement, not imposed upon public school early childhood programs such as petitioner's, would be a difficult requirement to satisfy for many private providers who serve small, fluctuating numbers of

¹ CACFP is authorized at section 17 of the National School Lunch Act (42 U.S.C. 1766). Program regulations are issued by the U.S. Department of Agriculture (USDA) under 7 CFR part 226.

pre-school children, were it not for their eligibility to receive funding from the public school districts that they serve.

Finally, petitioners contend that the Department's denial of funding for food services in the 2007-2008 school year is arbitrary and capricious because the Department granted petitioner a special request for \$54,000 for food service workers for the 2006-2007 school year. Petitioner did not, however, meet its burden to show arbitrariness. The Commissioner notes that the Department's Early Childhood Education Office's budget instructions and guidance for Abbott preschool programs (Exhibit P-13) is expressly designed for one-year budgets. In addition, as the ALJ found, budgets are subject to cycles and fluctuating circumstances and forecasts. The fact that the Department may have granted a request for food service funds in one year but not in another does not create a precedent or requirement that such grants of public monies continue. ²

Accordingly, the petition is dismissed.

IT IS SO ORDERED³

COMMISSIONER OF EDUCATION

Date of Decision: April 12, 2007

Date of Mailing: April 13, 2007

² And as the ALJ noted, "estoppel" and "waiver" generally do not apply to government agencies. *Buonviaggio v. Hillsborough Tp. Commission*, 122 N.J. 5, 17 (1991) (We recognize that the application of waiver or estoppel principles to government actions is to be most strictly limited).

³ Pursuant to P.L. 2006, c. 45, "Abbott" determinations are final agency actions appealable directly to the Appellate Division of the New Jersey Superior Court. In accordance with *N.J.A.C. 6A:10A-9.7(a)5*, such appeals must be filed within six (6) days of the Commissioner's decision.