

CHAPTER 10

ABBOTT DISTRICT ADDITIONAL SUPPLEMENTAL
FUNDING FOR THE 2003-2004 SCHOOL YEAR

Authority

Fiscal Year 2004 Appropriations Act.

Source and Effective Date

R.2003 d.312, effective July 2, 2003.
See: 35 N.J.R. 3701(a).

Chapter Expiration Date

Chapter 10, Abbot District Additional Supplemental Funding for the 2003-2004 School Year, expires on June 30, 2004.

Chapter Historical Note

Chapter 10, Improving Standards-Driven Instruction and Literacy in Abbott Districts, was adopted as special new rules by R.2003 d.312, effective July 2, 2003. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

6A:10-1.1 Purpose and applicability of rules

These rules are adopted pursuant to Fiscal Year 2004 Appropriations Act. The rules apply to "Abbott districts" as defined in N.J.A.C. 6A:10-1.2. These rules serve to ensure the provision of a thorough and efficient system of education (T & E), as defined by the Core Curriculum Content Standards (CCCS); and to ensure that programs and services mandated by the New Jersey Supreme Court in *Abbott v. Burke* are properly implemented. Abbott districts must comply with the requirements of the Comprehensive Edu-

ational Improvement and Financing Act (CEIFA) rules promulgated to implement that Act; and N.J.A.C. 6A:24, promulgated to implement certain provisions of *Abbott v. Burke*; except that where differences between these rules occur, the rules herein shall take precedence.

6A:10-1.2 Definitions

As used in this chapter, unless the context clearly indicates otherwise, the following words shall have these meanings:

"Abbott district" means one of the following 28 urban districts in district factor group A and B specifically identified in the appendix to *Raymond Abbott, et al. v. Fred G. Burke, et al.* decided by the New Jersey Supreme Court on June 5, 1990 (119 N.J. 287, 394) as follows: Asbury Park City, Bridgeton City, Burlington City, Camden City, East Orange City, Elizabeth City, Garfield City, Gloucester City, Harrison Town, Hoboken City, Irvington Township, Jersey City, Keansburg Borough, Long Branch City, Millville City, New Brunswick City, Newark City, City of Orange Township, Passaic City, Paterson City, Pembertown Township, Perth Amboy City, Phillipsburg Town, Pleasantville City, Trenton City, Union City, Vineland City and West New York Town, and the following districts not included above but designated Abbott districts pursuant to P.L. 1999, c.110, Neptune Township and Plainfield, and such other districts as may qualify in the future. Abbott district shall not include a charter school located within any of these districts.

"Actual 2002-2003 expenditure" means, for the 2003-2004 school year, a cash or accrued expense in the 2002-2003 school year for goods and/or services received in the 2002-2003 school year.

"Additional supplemental funding" means, for the 2003-2004 school year, the discretionary funding awarded by the Commissioner to maintain the instructional program approved and provided in 2002-03.

"Appropriations Act" means the unitary appropriations law covering a single fiscal year as required by N.J. Const. Art. 8, Section 2, paragraph 2.

"Core Curriculum Content Standards (CCCS)" means the standards of achievement established for the provision of a thorough and efficient education pursuant to N.J.S.A. 18A:7F-4.

"Commissioner" means the Commissioner of Education or the Commissioner's designee.

"Demonstrated need" means a documented finding by a school that some or all students will be unable to master the CCCS unless a particular program, service, position, or combination is provided in that the connection between the

proposed remedy and improved student achievement is also documented.

“Department” means the New Jersey Department of Education.

“District board of education,” “board” or “district” means the local district board of education, or the State district superintendent in the case of a State-operated school district of an Abbott district.

“Educational Facilities Construction and Financing Act (EFCFA)” means P.L. 2000, c.72.

“Instructional program” means, for the 2003–2004 school year, programs, services and positions that are school based and are directly serving students in the attainment of the core curriculum content standards.

“Maintenance budget” means, for the 2003–2004 school year, a budget funded at a level such that the district can implement 2002–2003 approved and provided programs, services, and positions and includes documented increases in non-discretionary expenditures and adjustments for actual 2002–2003 expenditures. Examples of non-discretionary expenditures are increases in contracted salaries, health benefits, and special education tuition. Maintenance does not include the restoration of programs, positions, or services that were provided in previous years or new programs, positions, or services unless necessary to meet paragraph 2c of the Supreme Court’s order of June 24, 2003 in *Abbott v. Burke*. Maintenance also does not include non-recurring 2002–2003 expenditures.

“Non-instructional program” means, for the 2003–2004 school year, office/administrative expenditures and programs, positions, services and/or expenditures that are not school based or that are not directly serving students in the attainment of the core curriculum content standards.

“School-based budget” means a budget for an individual school.

Special amendment, R.2003 d.369, effective August 22, 2003 (to expire June 30, 2004).

See: 35 N.J.R. 4329(a).

Rewrote “Additional supplemental funding”; added “Actual 2002-2003 expenditure”, “Demonstrated need”, “Instructional program”, “Maintenance budget”, and “Non-instructional program”.

Special amendment, R.2003 d.393, effective September 9, 2003 (to expire June 30, 2004).

See: 35 N.J.R. 4758(a).

Deleted “Abbott Preschool Program Contract”, “Child care center provider”, “Child Development Associate (CDA)”, “Certified Child-care Professional” (CCP), “Early Childhood Education Advisory Council (ECAC)”, “Early childhood expenditures”, “Early childhood screening instrument”, “Full-day, full-year”, “Full-time family worker”, “Master teacher”, “Preschool operational plan”, “Reliable independent observer”, “Reliable program quality assessment instrument”, “Systematic professional development”, “Teaching staff members”, and “Uniform preschool enrollment form”.

Case Notes

Definition of “maintenance budget,” in emergency regulations of Department of Education (DOE) governing determination of amount of additional supplemental State aid to be disbursed to certain school districts in school year, conflicted with Supreme Court order with respect to preliminary maintenance budget figures; Court had directed DOE to determine preliminary maintenance budget figures on basis of districts’ approved budgets for prior year, but DOE’s methodology used districts’ actual expenditures. *Asbury Park Bd. of Education v. New Jersey Department of Education*, 849 A.2d 1074.

Definition of “non-instructional program,” in emergency regulations of Department of Education (DOE) governing determination of amount of additional supplemental State aid to be disbursed to certain school districts in school year, did not conflict with Supreme Court order; because DOE had completed its effectiveness and efficiency review of districts’ budgets, there was no need to decide any hypothetical question as to whether there could be a program, position, service, or expenditure that would be classified as “non-instructional” under DOE’s definition, but would be exempt from effectiveness and efficiency review under Court’s definition. *Asbury Park Bd. of Education v. New Jersey Department of Education*, 849 A.2d 1074.

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. DISTRICT REQUEST FOR ADDITIONAL SUPPLEMENTAL FUNDING

6A:10-3.1 Application for additional supplemental funding for the 2003–2004 school year

(a) The board shall submit to the Department for approval, pursuant to N.J.S.A. 18A:7F-5(c) and 6(c), a balanced budget consistent with N.J.S.A. 18A:4-14 and 18A:22-8. When necessary, a board shall submit an application for additional supplemental funding in a format prescribed by the Commissioner as part of the original districtwide budget to be submitted pursuant to N.J.S.A. 18A:7F-5(c) and 6(c). Additional supplemental funding requires the applicant district to complete the budget application, supporting documents and all additional supplemental funding request forms provided by the Department in accordance with N.J.S.A. 18A:7F-6. Failure to provide timely and complete information may be the basis for rejection of the requested funds.

(b) The board shall consider all available resources, reallocations and other factors before submitting an application for additional supplemental funding as follows:

1. Undesignated general fund balances in excess of two percent;
2. Salary appropriations for vacant positions in excess of the district’s average salary for the position title;
3. Salary breakage for replacement of retiring staff during the upcoming budget year;

4. Positions, programs and services or other appropriations not required for all students to achieve the CCCS and to read at grade level by completion of the third grade;

5. Positions, programs and services or other appropriations that are not effective and/or efficient;

6. Appropriations in excess of actual documented need as contained in the approved district and school three-year operational plans; and

7. All costs eligible for funding under the Educational Facilities Construction and Financing Act.

(c) The Department shall review the district-wide budget to determine if all available resources, reallocations and other factors have been incorporated and that the budget is a maintenance budget that contains only those programs, positions and services approved and provided in 2002-2003. The Department shall review the maintenance budget to ensure that all non-instructional expenditures are effective and efficient.

1. The effectiveness and efficiency of non-instructional expenditures in the 2002-2003 budget shall be determined by:

i. A comparative analysis of non-instructional expenditures to those of other school districts and/or historical spending patterns in the district.

ii. An analysis of staffing needs, including, but not limited to, comparative data of ratios of non-instructional/administrative staff to instructional staff as well as district-specific information regarding staffing needs.

iii. A review of non-instructional programs to identify expenditures that are included that may be funded through other funding sources or that alternative funding is not available because the expenditure is not essential to the provision of a thorough and efficient education. Such expenditures include, but are not limited to, capital costs that could be funded pursuant to the Education Facilities Construction and Financing Act or that exceed the facilities efficiencies standards established pursuant to the Act.

iv. Cost savings and/or inefficiencies identified or proposed by the district or by the State Auditor or Office of Legislative Services audit.

2. If a non-instructional program is determined to be ineffective and/or inefficient, a corresponding reduction shall be made to the district's budget.

(d) The Commissioner shall review applications for additional supplemental funding and make a determination based on:

1. Confirmation that the district filed a complete budget application and supporting documentation to the Department on the date specified and is consistent with this chapter and the district specifies guidance provided by the Department;

2. That the district has responded to the Department's review of its application for additional supplemental funding and has made available all information requested;

3. Documentation by the district, confirmed by the Commissioner, that the additional funds sought cannot be achieved by:

i. Reallocating from non-instructional programs that are determined not to be effective or efficient; or

ii. Attaining economies and efficiencies in the delivery of services and programs;

4. Evidence by the district that an essential program or service cannot be funded through reallocation and that without additional supplemental funding the core instructional programs will be negatively affected. The core instructional program for the school year will be the instructional program approved and provided in the 2002-2003 school year and shall include any documented increase in non-discretionary expenditures including, but not limited to, contracted salary increases, increases in health benefits, and increases in special education tuition;

5. A determination by the Commissioner that the business and financial practices of the district are efficient and effective, that a current and complete roster of positions (both filled and vacant) in the district is available, that the board secretary's report is filed monthly, and other indicators that the district operates with a special regard for the value of public funds.

(e) The Department shall issue a preliminary estimate of supplemental funding needed to support a maintenance budget as reduced for ineffective and/or inefficient non-instructional programs for 2003-2004. This amount is subject to adjustment as provided in the Appropriation Act.

(f) If the Commissioner determines that a non-instructional program is ineffective and/or inefficient and makes a corresponding expenditure reduction in the district budget, these monies shall be made available to a district if it can identify an unmet demonstrated need for a program or service. A district may apply for these funds once any appeal by that district as to reductions in the 2003-2004 school year budget for ineffective and/or inefficient non-instructional programs has been decided by the Commissioner or otherwise resolved.

1. An application for such funds must include evidence that:

i. The program, position or service being requested will have a direct effect on the academic success of the students identified as needing the program and evidence in support of this must be attached to the application;

ii. The program, position or service is not redundant or duplicative of other programs, positions or services available at that school and the application must attach an inventory of existing programs, positions and services at that school;

iii. The program, service or position is school based and directly serving students;

iv. The identified need is a result of an appropriate assessment of the instructional needs of all or some students in that school and the application must attach that needs assessment;

v. There is no possible way to organize or redirect existing programs, services, positions or other resources to serve the instructional needs identified;

vi. The program, position or service being requested has been demonstrated effective in meeting the identified need of similar students and the evidence of this demonstration must be attached to the application; and

vii. The program, service or position is either in place or can be implemented in an effective manner during the 2003-2004 school year.

2. If the Commissioner determines that the district has met the standard set forth in (f)1 above to demonstrate a need for a program, position or service and the funds are available, he or she may award the funds to the district for the provision of that program. Any such funds shall be kept in a restricted account and may only be used for the program or service approved under this subsection. Any funds not expended during the 2003-2004 school year shall be returned to the State.

(g) If during a school year, the board determines the need for additional resources to implement the Department-approved programs, services and other expenditures due to unanticipated expenditures or unforeseen circumstances, a separate application for additional supplemental funding shall be filed consistent with the provisions of this subchapter.

1. The application should document the nature of the unanticipated expenditures or unforeseen circumstances and the impact on the current approved budget.

2. The Department's review of the separate application shall be consistent with the provisions in (d) above.

3. Upon review of the current status of the district's approved budget, the needs of the district as presented in the application and the proximity of the application submission to the end of the school year, the Department may direct the reallocation of general fund balances below two percent prior to approving additional resources.

4. Amounts approved by the Commissioner in response to the district's separate application will be available for expenditure during the school year.

5. The revenue shall be recognized through the establishment of an accounts receivable subject to appropriation in the subsequent year's Appropriations Act, or by a supplemental appropriation.

(h) Any board requesting additional supplemental funding shall ensure that all spending is necessary and aligned with the objectives and strategies for achieving the CCCS and ensuring all students read at grade level by the end of third grade. Expenditures related to Department-approved preschool program plans and programs related to helping all students achieve the CCCS and read at grade level by the end of third grade shall be given the highest priority.

Special amendment, R.2003 d.369, effective August 22, 2003 (to expire June 30, 2004).

See: 35 N.J.R. 4329(a).

Rewrote (c) and (d); added new (e) and (f); recodified existing (e) and (f) as (g) and (h).

Administrative correction.

See: 35 N.J.R. 5371(c).

Case Notes

Definition of "maintenance budget," in emergency regulations of Department of Education (DOE) governing determination of amount of additional supplemental State aid to be disbursed to certain school districts in school year, conflicted with Supreme Court order with respect to preliminary maintenance budget figures; Court had directed DOE to determine preliminary maintenance budget figures on basis of districts' approved budgets for prior year, but DOE's methodology used districts' actual expenditures. *Asbury Park Bd. Of Education v. New Jersey Department of Education.*, 849 A.2d 1074.

Emergency regulations of Department of Education (DOE) prescribing standards for evaluating effectiveness and efficiency of non-instructional programs in certain school districts did not conflict with Supreme Court order. *Asbury Park Bd. Of Education v. New Jersey Department of Education.*, 849 A.2d 1074.

SUBCHAPTER 4. APPEALS

6A:10-4.1 Applicability of subchapter

An aggrieved applicant for Department authorization to improve or amend an existing program for the 2003-2004 school year, adopt a supplemental program or service for the 2003-2004 school year, or seek additional supplemental funding for the 2003-2004 school year may appeal to the Commissioner in accordance with the provisions of this subchapter.

Special amendment, R.2003 d.393, effective September 9, 2003 (to expire June 30, 2004).

See: 35 N.J.R. 4758(a).

Inserted "for the 2003-2004 school year" throughout.

6A:10-4.2 Filing, service and documentation of petition

(a) Any appeal filed pursuant to this subchapter shall, except as noted in (a)1 and 2 below, meet the filing, service and format requirements for petitions of appeal as set forth in N.J.A.C. 6A:3, and shall generally proceed as a contested case except as noted in this subchapter. Service of the petition is required on the Attorney General of the State of New Jersey, and should be directed to the Department of Law and Public Safety, Division of Law, PO Box 112, Trenton, New Jersey 08625-0112; Attention: Education Section.

1. Any appeal of a determination made pursuant to N.J.A.C. 6A:10-3.1(c) shall be governed by N.J.A.C. 6A:10-4.7.

2. Any other appeal filed pursuant to this subchapter shall be filed within 30 days of the date of the decision which is the subject of the requested contested case hearing.

(b) Any appeal filed pursuant to this subchapter shall include, in addition to the petition required under (a) above, a copy of the complete application submitted to the Department and copy of the determination from which the appeal is taken.

(c) Appeals may be filed by the entity that submitted the application under dispute, or by the district board of education in the case of applications filed by entities other than the district board of education. In any appeal in which the district board of education is not the petitioner, the district board of education shall be named as an indispensable party to the appeal.

Special amendment, R.2003 d.369, effective August 22, 2003 (to expire June 30, 2004).
See: 35 N.J.R. 4329(a).
Rewrote (a).

6A:10-4.3 Filing, service and documentation of answer

(a) Answers to petitions of appeal filed pursuant to this subchapter shall meet the filing, service and format requirements for answers as set forth in N.J.A.C. 6A:3. Nothing herein shall preclude the filing of a motion to dismiss in lieu of an answer.

1. Any answer filed pursuant to this subchapter shall be filed within 20 days of the date of receipt of the petition.

6A:10-4.4 Review of pleadings

Upon review of the petition, answer and supporting documentation, the Commissioner may use the procedure set forth in N.J.A.C. 6A:10-4.5 to decide the matter. If so, he or she shall notify the parties and they shall be provided the opportunity to submit any additional documents submitted to the Department or considered by the Department in rendering the decision.

6A:10-4.5 Submission of position statements and replies

If the Commissioner requires the submission of position statements and replies, within 20 days after receipt of the notice from the Commissioner pursuant to N.J.A.C. 6A:10-4.4, the petitioner shall file a letter memorandum setting forth the basis for its position, referencing the criteria established for the application process and the materials submitted in conjunction with it. Within 10 days of receipt of petitioner's memorandum, each respondent shall file such reply as it may wish to make. Within five days of receipt of any reply, petitioner may file a final response thereto. All

submissions shall be filed in triplicate (original and two copies) and served upon all other parties to the appeal at the same time they are filed with the Commissioner.

6A:10-4.6 Commissioner review and decision

(a) If the Commissioner retains the matter pursuant to N.J.A.C. 6A:10-4.5, upon receipt of the filings set forth in N.J.A.C. 6A:10-4.5, or expiration of the time for their submission, the Commissioner shall review the total record before him or her and render a written decision. If the Commissioner transmits the matter to the Office of Administrative Law, such transmission shall be done on an expedited basis to resolve factual disputes.

(b) The Commissioner's decision shall include an appropriate order. Where the relief ordered includes additional funding, the Commissioner shall make the necessary request to the Governor and the Legislature.

(c) In rendering decisions pursuant to this subchapter, the Commissioner shall apply the same standards as are set forth for Department review in the operative rules for the type of application in dispute. The burden of proof shall be on the petitioning party to demonstrate that these standards were met by the applicant notwithstanding the Department's determination to the contrary. The record on appeal shall consist of those documents and information submitted to the Department in support of its application and any additional information relied upon by the Department in making the determination at issue.

6A:10-4.7 Appeals of decision rendered pursuant to N.J.A.C. 6A:10-3.1(c)

(a) Reductions to the maintenance budget made pursuant to N.J.A.C. 6A:10-3.1(c) may be appealed to the Commissioner as follows:

1. If the district has a pending appeal of the 2003-2004 budget at the Office of Administrative Law, the district shall contact the assigned Administrative Law Judge within one business day of receipt of the notice of the preliminary estimate of supplemental funding needed to support a maintenance budget (as reduced for ineffective and/or inefficient non-instructional programs) for 2003-2004 to seek a pre-hearing conference in which the issues on appeal can be identified.

2. If the district does not have a pending appeal of the 2003-2004 budget at the Office of Administrative Law, the district shall file with the Commissioner, the Office of Administrative Law, Attention Chief Administrative Law Judge and the Attorney General, Attention Education Section, a letter within seven days of receipt of the notice of the preliminary estimate of supplemental funding needed to support a maintenance budget (as reduced for ineffective and/or inefficient non-instructional programs) for 2003-2004 that specifically identifies the issues of appeal and seeks a pre-hearing conference. No answer shall be filed to this letter of appeal.

3. In the appeals, the Department shall bear the burden of moving forward to establish the basis for any proposed reductions to the district's maintenance budget based on the effective and efficient standard set forth in N.J.A.C. 6A:10-3.1(c). If that initial burden is met, the district shall bear the burden of demonstrating that any budgetary reductions are not justified under that standard.

Special New Rule, R.2003 d.369, effective August 22, 2003 (to expire June 30, 2004).
See: 35 N.J.R. 4329(a).