

GEORGE F. HENDRICKS, ESQ.
HENDRICKS & HENDRICKS, ESQS.
73 Paterson Street
New Brunswick, NJ 08901
Tel. (732) 828-7800
Counsel for Petitioner,
Board of Education of the City of New Brunswick

BOARD OF EDUCATION OF CITY	:	
OF NEW BRUNSWICK,	:	BEFORE THE COMMISSIONER OF
Petitioner,	:	EDUCATION
	:	
vs.	:	AGENCY DOCKET NO.
	:	
NEW JERSEY DEPARTMENT OF	:	VERIFIED PETITION OF APPEAL
EDUCATION,	:	
Respondent.	:	
	:	

Petitioner, Board of Education of the City of New Brunswick (“Board” or “District”) pursuant to **N.J.A.C. 6A:10A-9.7(a)(2) et seq.**, appeals the January 14, 2005 decision of Dr. Ellen Frede, Assistant to the Commissioner for Early Childhood Education (“January 14 decision”), denying the District’s requests for needed components of the District’s pre-school educational program for the 2005-2006 school year.

In support of this Verified Petition of Appeal, the District sets forth the following:

PARTIES

1. Petitioner, Board of Education of the City of New Brunswick, is charged with various responsibilities relating to the New Brunswick School District. The New Brunswick School District is an Abbott District, as defined in **N.J.S.A. 18A:7F-3** and **N.J.A.C. 6A:10A-1.2**.

2. Respondent, New Jersey Department of Education (“DOE”) has broad responsibilities to supervise public education in New Jersey and to effectuate constitutional and legislative policies relating to education in this State. Respondent is responsible for reviewing the District’s Early Childhood Program Aid Operational Plan for Fiscal Year 2005-2006 (“2005-2006 Plan”). The DOE is also required to provide the District with adequate funding to establish and provide needed programs, facilities, services and resources for, among other things, well-planned, high quality pre-school education for all three and four year olds on an extended day and full year basis.

NATURE OF ACTION

3. The District seeks review by the Commissioner of the January 15, 2005 decision denying adequate funding for the District to provide required and needed items for the pre-school program in the District. Specifically, the issues raised by the District on this appeal include, but are not limited to, the DOE’s: (1) Mandate for the removal of 3.5 vacant positions that have not been filled; (2) Recalculated allocations for district-wide office computers, office printers, and software; (3) Removal of funding for the summer enrichment program; (4) Denial of an executive, fiscal and administrative support staff for the Puerto Rican Action Board; (5) Denial of the request by the Puerto Rican Action Board for an additional cook’s assistant; (6) Denial of the request by the Puerto Rican Action Board for a security system; (7) Denial of special request by the Puerto Rican Action

Board for fringe benefits in excess of 12.5 percent for non-teaching staff; and (8) Denial of request by the Puerto Rican Action Board for a cleaning service contract.

4. The January 14 decision contravenes the Supreme Court's directives in the *Abbott* decisions, is unauthorized by law, and violates the Department's own regulations.
5. The District seeks, through this appeal, the Commissioner's approval of adequate funding to enable the District to provide required and needed positions, programs, resources and services for pre-school education in the District in the 2005-2006 school year.
6. The Commissioner's approval of the District's 2005-2006 Plan is compelled by the *Abbott* mandates and by the State's obligation to provide adequate funding for well-planned, high quality pre-school education programs and services in the Abbott Districts.

FACTUAL BACKGROUND

7. In the latter part of 2004, the District submitted to the DOE its 2005-2006 revised Three-Year Preschool Operational Plan for three and four year olds residing in the New Brunswick District ("2005-2006 Plan").
8. Subsequent to the submission of the 2005-2006 Plan, the District provided written and verbal responses to inquiries from the Department relating to the 2005-2006 Plan.

9. On or about January 14, 2005, the District received the January 14, 2005 decision letter (a true and correct copy of the January 14 decision is appended to this Verified Petition as Exhibit "A").
10. The January 14 decision provides inadequate funding for essential pre-school education positions, programs and services in the 2005-2006 school year, as set forth in Paragraph 3 of this Verified Petition of Appeal.
11. The January 14 decision prevents the District from properly implementing the preschool educational program needed for the District's three and four year olds.
12. The January 14 decision denies funding for certain essential programs, services, positions and resources in the District's 2005-2006 Plan.
13. The funding specified in paragraphs 3 and 10-12 of this Verified Petition of Appeal is necessary to provide a well-planned high quality pre-school program for New Brunswick's children, as well as to provide the services needed to address their social and economic disadvantages.
14. The District is filing this appeal timely and adopted a Resolution on January 18, 2005 authorizing the undersigned, as Board Attorney, to file the within appeal, as specified by the Supreme Court of New Jersey and by the DOE's regulations. See Resolution adopted by the New Brunswick Board of Education on January 18, 2005, a copy of which is appended hereto as Exhibit "B."
15. Unless the Commissioner expedites this appeal in accordance with the Supreme Court mandate and takes prompt steps to approve adequate

funding for the 2005-2006 school year, preschool age children in the District will be deprived of the necessary programs, facilities, positions, services and resources required and needed under the *Abbott* decisions.

GROUNDS FOR APPEAL

COUNT ONE

**(VIOLATION OF THE CONSTITUTIONAL REMEDIES AND
MANDATES IN THE *ABBOTT* DECISIONS)**

16. Petitioner re-alleges the allegations in Paragraphs 1-15 and incorporates those allegations herein.
17. The Supreme Court in the *Abbott* decisions required well-planned, high quality preschool educational programs in the Abbott districts with adequate programs and services to address the social and economic disadvantages of children in those districts.
18. Those requirements include, but are not limited to: (1) well-planned and high quality educational programs and services for all eligible children; (2) the necessary services, support, resources, transportation and facilities for the proper implementation of required and needed programs for preschool age children; and (3) adequate funding for the proper implementation of pre-school programs and services based on the District's individualized needs.
19. By Order dated October 22, 2001, corrected on December 18, 2001 ("December 18th Order"), the Supreme Court, among other things, required the DOE to "continue to assist the District in an effort to cure any

deficiencies. . .” after District submission of its early childhood plan to the DOE.

20. The DOE, by virtue of the January 14 decision, violated the *Abbott* requirements and the December 18th Order – by erroneously denying substantial funding for various positions, programs, services and resources for the 2005-2006 school year.
21. The denial of adequate funding in the January 14 decision directly and adversely impacts upon the District’s ability to provide the required and needed programs, services, positions, and resources for pre-school children in violation of the *Abbott* mandates.

COUNT TWO

(VIOLATION OF DOE’S REGULATIONS)

22. Petitioner re-alleges the allegations in Paragraphs 1 to 21 and incorporates those allegations herein.
23. The DOE’s decisions specified above are unauthorized by and violate the DOE’s regulations.
24. Denial of those items specified in this Verified Petition of Appeal is not authorized by the DOE’s regulations and deprives the District of adequate funding for required and needed positions, services, resources and costs in the District’s 2005-2006 budget in violation of the DOE’s regulations.

COUNT THREE

**(VIOLATION OF DOE’S REGULATIONS ON EARLY
CHILDHOOD PROGRAMS)**

- 25. Petitioner re-alleges the allegations in Paragraphs 1-24 and incorporates those allegations herein.
- 26. **N.J.A.C. 6A:24-3.1 et seq.** establishes certain specific standards and requirements for early childhood programs in the Abbott districts, including pre-school education programs.
- 27. The Districts 2005-2006 Plan fully satisfies the applicable standards and requirements in the DOE’s regulations.
- 28. The January 14 decision denies adequate funding for required and needed preschool programs in violation of the DOE’s own regulations on early childhood programs.

COUNT FOUR

**(VIOLATION OF PROCEDURAL REQUIREMENTS IN ABBOTT V,
THE ADMINISTRATIVE PROCEDURE ACT AND LEGAL
REQUIREMENTS FOR AGENCY DECISION-MAKING)**

- 29. Petitioner re-alleges the allegations in Paragraphs 1-28 and incorporates those allegations herein.
- 30. The procedural requirements established by the Supreme Court in **Abbott V**, the New Jersey Administrative Procedure Act, and well-established legal precedent for agency decision-making in New Jersey compel the DOE, among other things: (1) to provide a sufficient statement of reasons for its agency decisions to enable an aggrieved Abbott district to understand and challenge the basis and rationale for the DOE’s actions;

and (2) to provide an Abbott district with a reasoned decision and with legally proper and supportable justifications for the DOE's adverse decisions on preschool educational plans.

31. The January 14 decision violates the basic requirements established by the Supreme Court in **Abbott V**, the New Jersey Administrative Procedure Act, and well-established legal precedent on agency decision-making in New Jersey.

COUNT FIVE

(THE JANUARY 20 DECISION IS ARBITRARY AND CAPRICIOUS)

32. Petitioner re-alleges the allegations in Paragraphs 1-31 and incorporates those allegations herein.
33. The District based the requested positions, programs, services, costs and resources in the District's 2005-2006 Plan on the needs of preschool children in the District.
34. The January 14 decision arbitrarily denies funding for preschool teachers, resources, positions, programs and services.
35. Without adequate or appropriate legal or factual justification, the January 14 decision eliminates funding for critically-needed components of the District's preschool educational program.
36. Without adequate or appropriate legal or factual justification, the January 14 decision arbitrarily limits funding for needed positions, programs, services, facilities, costs and resources for the 2005-2006 school year.

37. With regard to the DOE's decisions on the programs, services, costs, facilities, positions and resources challenged on this appeal, the DOE's January 14 decision is arbitrary and capricious and the denial of adequate funding for the District's preschool budget for the 2005-2006 school year should be corrected by providing the funding needed by the District.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner requests that the Commissioner provide the following relief on appeal:

- (1) Expedite this appeal and the final agency decision on the District's appeal from the January 14 decision on the District's 2005-2006 Plan.
- (2) Enter an appropriate Order approving the specific items in the District's 2005-2006 Plan that have been challenged in this appeal and requiring the Respondent to comply with the provisions of **N.J.S.A. 18A:7F-16**;
- (3) Provide, or make the necessary request to the Legislature for any additional funding needed to implement those components during the 2005-2006 school year; and

- (4) Grant such other relief as the Commissioner deems appropriate to ensure the proper and prompt implementation of the District's 2005-2006 Plan.

HENDRICKS & HENDRICKS, ESQS.

By: _____
GEORGE F. HENDRICKS, ESQ.
Counsel for Petitioner
New Brunswick Board of Education

DATED: February 1, 2005

VERIFICATION OF PETITION

The undersigned, on behalf of the Petitioner, Board of Education of the City of New Brunswick, of full age, being duly sworn upon his oath deposes and says:

1. I am the Superintendent of Schools for the New Brunswick School District and am authorized to sign this verification on behalf of the Petitioner in this matter.
2. I have read the Verified Appeal Petition and aver that the facts contained therein are true to the best of my knowledge and belief.

Richard M. Kaplan, Superintendent

DATED: February 1, 2005

Sworn and subscribed to before me
This ____ day of February, 2005.

NOTARY PUBLIC OF THE
STATE OF NEW JERSEY