



- budget lines to appropriation (sic) funds for future expenses; and
- f. Require Respondent to stop using the Workers Compensation Reserve improperly or funding for worker compensation twice in the same year.

3. It appears from the Petition that Petitioner's complaint centers on two main issues. First, Petitioner appears to be claiming that the School District overestimated its expenditures in formulating its budgets for the fiscal years 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012. Second, Petitioner appears to be claiming that the School District's creation and use of the workers' compensation reserve is in violation of law.

4. As will be set forth herein, Petitioner's claims are without merit.

5. First, the School District did not establish a "tax stabilization" fund for any of the years in question, but rather estimated its expenditures when formulating its budgets based upon sound financial practices.

6. When developing a budget for approval by the voters, the School District must:

.... present at the annual budget hearing a detailed statement in writing of the amount of money which will be required for the ensuing year for school purposes, specifying the several purposes and the amount for each. The amount for each purpose estimated necessary for payments to boards of cooperative educational services shall be shown in full, with no deduction of estimated state aid. The amount of state aid provided and its percentage relationship to the total expenditures shall also be shown.... (Education Law, Section 1718.)

7. In addition, Section 1318 of the Real Property Tax Law ("RPTL") provides, in pertinent part, that the tax warrant state:

.... the amount of unexpended surplus funds in the custody of the board and shall further state that except as authorized or required by law, such unexpended surplus funds have been applied

in determining the amount of the school tax levy. For the two thousand seven--two thousand eight school year, surplus funds as used in this subdivision shall mean any operating funds in excess of three percent of the current school year budget, and shall not include funds properly retained under other sections of law. For the two thousand eight--two thousand nine school year, and thereafter, surplus funds as used in this subdivision shall mean any operating funds in excess of four percent of the current school year budget, and shall not include funds properly retained under other sections of law....

8. In accordance with both the RPTL and the Education Law, the School District developed budgets for the 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012 fiscal years. The approved budget amounts and the amounts retained as unreserved, undesignated surplus were provided to the community in accordance with law and are as follows:

| Year      | Voter Approved Budget | Actual Expenditures | Unreserved Undesignated Fund Balance | Percentage of Approved Budget |
|-----------|-----------------------|---------------------|--------------------------------------|-------------------------------|
| 2007-2008 | \$274,007,921         | \$265,060,293       | \$8,220,237                          | 2.99%                         |
| 2008-2009 | \$279,401,007         | \$267,926,888       | \$11,176,040                         | 4.00%                         |
| 2009-2010 | \$274,194,940         | \$265,509,366       | \$10,941,374                         | 4.0%                          |
| 2010-2011 | \$280,711,665         | To be determined    | \$11,232,884                         | 4.0%                          |
| 2011-2012 | \$287,834,125         | To be determined    | To be determined                     | To be determined              |

9. When the budget is developed and adopted for submission to the voters, the School District is required to estimate the amount of state aid which will be granted to

the School District. At the time of its adoption of the school budget in the spring, the School District is only able to rely upon the Governor's proposed state aid figures, since the formal adoption of a State budget by the legislature is not required to be accomplished until April 1. Moreover, for the last several years, the adoption of the State budget has been delayed well beyond even the date set for the school budget vote, i.e. the third Tuesday of May. For example, in 2008, the State Legislature did not adopt a budget until October. Similarly, in 2010, the State Legislature did not adopt a budget until August.

10. Hence, in formulating the school budget, the School District must rely on the Governor's proposed state aid figures in estimating its revenue stream for the coming fiscal year.

11. In addition, at the time the budget is prepared, the School District is required to estimate certain expenses based upon the data available to it.

12. During the formulation of the budget for the 2007-2008 fiscal year, the School District was required to estimate several expenditures, including but not limited to:

- a. The School District's negotiations with the teachers association had not been concluded at the time the budget was prepared. Hence, the School District included an estimated amount of money it would need in the event a settlement with the teachers association was achieved during 2007-2008.

- b. The School District does not receive the final cost of its New York State Teachers Retirement System and New York State Employees' Retirement System contribution rate until after the budget is approved by the voters. The District estimated 9% as its employer contribution rate when developing its budget.
- c. The School District does not receive the amount of the increase in health insurance premiums at the time the budget is developed. The District estimated the percentage increase in these premiums to be 10%.

13. During the formulation of the budget for the 2008-2009 fiscal year, the School District was required to estimate several expenditures, including but not limited to:

- a. The School District's negotiations with the UPSEU bargaining unit had not been concluded at the time the budget was prepared. Hence, the School District included an estimated amount of money it would need in the event a settlement with the UPSEU was achieved during 2008-2009.
- b. The District estimated the percentage increase in the premiums for the NYSTRS and ERS to be 7.5%, based upon its experience in the previous fiscal year.
- c. In addition, the School District's insurer, NYSIR, recommended that the School District include in its budget a 4% premium increase for other district insurance premiums.

- d. The School District anticipated that it would have approximately 170 students enrolled in the BOCES Occupational Education Program and the budget line item for the expense associated with this program was based upon this enrollment figure.
- e. The School District included a line for the interest associated with the utilization of tax anticipation notes.

14. During the formulation of the budget for the 2009-2010 fiscal year, the School District was required to estimate several expenditures, including but not limited to:

- a. The District estimated 7% as its employer contribution rate for the New York State Teachers' Retirement System and the New York State Employee's Retirement System when developing its budget, based on its experience in the previous fiscal year.
- b. The District estimated the percentage increase in these premiums to be 7.5%, based upon its experience in the previous fiscal year.

15. Finally, each year, the School District must estimate the number of staff members it will require for the next school year and take into account variables which are not within its control. For example, the School District cannot precisely identify: (a) the number of leave replacements that will be required during the course of the school year; (b) the amount of money it will need for substitute or leave replacement staff; (c) the number of staff members who will choose to retire during the course of a fiscal year,

(d) forecasted staffing needs; or (e) the salary and benefits afforded each of its employees pursuant to its existing collective bargaining agreements.

16. For each of the years in question, the School District submitted proposed budgets to the voters for approval. The voter approved budget, modifications to the budget, and the actual expenditures were as follows:

| Year      | Voter Approved Budget | Modification to Budget | Modified Budget | Actual Expenditures from the General Fund | Difference    |
|-----------|-----------------------|------------------------|-----------------|---|---------------|
| 2007-2008 | \$274,007,921         | \$ 700,000             | \$274,707,921   | \$265,060,293                             | \$ 9,647,628  |
| 2008-2009 | \$279,401,007         | \$ (599,400)           | \$278,801,607   | \$267,926,888                             | \$ 10,874,719 |
| 2009-2010 | \$274,194,940         | \$ 3,500,000           | \$277,694,940   | \$265,509,366                             | \$ 12,185,574 |
| 2010-2011 | \$280,711,665         | \$ 1,400,000           | \$282,111,665   | To be determined                          |               |
| 2011-2012 | \$287,834,125         |                        |                 |   |               |

(See copies of the audit reports from the School District’s external auditors for fiscal years 2007-2008, 2008-2009, 2009-2010, annexed hereto as Exhibits A, B and C, respectively.)

17. As noted above, the voters of the School District approved a budget in the amount of \$274,007,921 for fiscal year 2007-2008. On August 2, 2007, as a result of damage sustained during a storm, the Board of Education adopted a resolution declaring the damage to the District Office roof an emergency, declaring the expense for the repair to be an ordinary contingent expense, and authorizing the repair in accordance with its architect’s recommendations. (A copy of the Board’s resolution is

annexed hereto as Exhibit D.) As such, the budget for 2007-2008 was modified in accordance with law, as a result of the expense associated with the cost of the District Office roof emergency repair.

18. In 2008-2009, the voters of the School District approved a budget in the amount of \$279,401,007. Thereafter, in the fall of 2008, the School District was advised that the expenses associated with the universal pre-kindergarten program were required to be accounted for in the special aid fund rather than the general fund. Hence, the budget was modified to reflect a decrease of \$599,400. (A copy of the Board's resolution is annexed hereto as Exhibit E.)

19. In 2009-2010, the voters of the School District approved a budget in the amount of \$274,194,940. In the fall of 2010, the budget was modified to reflect an increase in the amount of \$3,500,000. This modification was the result of an emergency roof project required to be performed at East High School. As a result of several high wind storms during the late summer and early fall, the School District, in conjunction with its engineers, determined that the upper roof at East High School had suffered structural damage. Therefore, the Board of Education adopted a resolution declaring the damage to the upper roof to be an emergency. (A copy of the Board's resolution is annexed hereto as Exhibit F.)

20. In 2010-2011, the voters of the School District approved a budget in the amount of \$280,711,665. In the fall of 2010, the budget was modified to reflect an increase in the amount of \$1,400,000. This modification was the result of an emergency roof project

required to be performed at East High School. As a result of the work performed on the upper roof in the summer of 2010, the School District, in conjunction with its engineers, determined that the lower roof at East High School had also suffered structural damage. This damage became apparent only after the upper roof project was performed. As a result, the Board of Education adopted a resolution declaring the damage to the lower roof to be an emergency. (A copy of the Board's resolution is annexed hereto as Exhibit G.)

21. During the course of each fiscal year, the School District administration closely monitors its budget and the actual expenditures thereunder.

22. Based upon savings accomplished during each of the fiscal years in question, the School District's actual expenditures were lower than the estimate. The actual expenditures associated with the budget for the years 2007-2008, 2008-2009, and 2009-2010 are set forth in the encumbrance reports annexed hereto as Exhibits H, I, and J, respectively. In the approximately 800 budget lines, there are instances where insufficient funds exist in the line due to circumstances outside the control of the School District and instances where the District expended less than anticipated. The net of the savings and lines which for which there were insufficient funds is reflected in the chart set forth in paragraph 16 above.

23. Further, Petitioner refers the Commissioner to discussions by individual Board members at three (3) meetings over the course of the last five (5) years as evidence of the School District's "plan" to create an alleged "tax stabilization" fund.

24. The budgeting process is a lengthy process which begins in the late fall and culminates in the adoption of a proposed budget by the Board of Education in the spring. During this period of time, the over 800 individual budget lines are discussed in great detail and each Board member provides his/her opinion concerning the development of the budget.

25. At the meeting of October 6, 2010, the Board engaged in a discussion concerning the emergency roof repair and the costs associated with the repair. In addition, the Board discussed the manner in which the repair would be funded in the context of the adoption of the tax levy. As is evident from the lengthy discussion, several Board members gave their individual opinion concerning this cost. The Board, as a whole, did not "hatch a plan" to maintain surplus money in the budget, but rather questioned the manner in which the project would be funded and how this would impact the budget. (A copy of a certified transcript of the October 6, 2010 Board meeting is annexed hereto as Exhibit K.)

26. In February, 2011, Board members individually addressed their positions concerning the formulation of the 2011-2012 budget and specific line items of the budget. (A copy of a certified transcript of the February 16, 2011 Board meeting is annexed hereto as Exhibit L.) Each of the Board member's comments and questions is addressed by the Superintendent of Schools and me during budget development.

27. As noted above, the budgeting practices employed by the School District during the development of the budget, and ultimately the adoption of the budget, is performed

in accordance with law and based upon several expenditures for which a precise monetary figure is not known.

28. Petitioner has not demonstrated any intent or actual intent by the School District to over-estimate the budget so that surplus money is available each year.

29. Based upon the foregoing, Petitioner's claim that the School District improperly established a "tax stabilization" fund is without merit.

30. Petitioner also argues that the School District is utilizing the Workers' Compensation Reserve in violation of law.

31. The School District currently maintains a Workers' Compensation Reserve in accordance with General Municipal Law, section 6-j.

32. At the commencement of the 2007-2008 fiscal year, the amount deposited in said reserve was \$7,470,118.

33. Based upon an actuarial study of the school district's short and long term liabilities, the School District determined that the Workers' Compensation Reserve was underfunded. (A copy of said actuarial study is annexed hereto as Exhibit M.)

34. As a result, rather than deplete the insufficient funds deposited in the Workers' Compensation Reserve, monies were included in the budget for the payment of workers' compensation claims for each of the fiscal years in question.

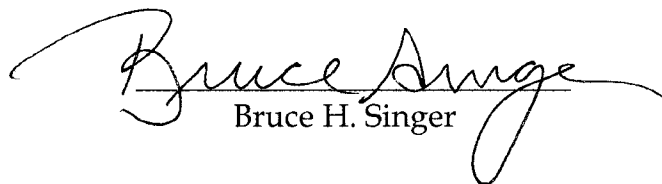
35. The School District paid said workers' compensation claims from the budgeted line items and utilized the reserved money when the amount budgeted for workers' compensation claims was insufficient to pay the outstanding claims for the fiscal year.

36. During 2010-2011, the School District budgeted \$1,800,000 in the workers' compensation line item. To date, the School District expects to expend \$2,200,000 in connection with workers' compensation claims for the 2010-2011 fiscal year. The School District will pay this liability through the use of the existing money in the 2010-2011 budget and the Workers' Compensation Reserve since the amount budgeted is insufficient to meet the total liability to the School District.

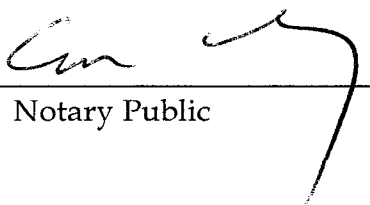
37. Hence, contrary to Petitioner's allegations, the School District is not "increasing" the budget for this purpose, but is rather using existing money in the budget and the established Workers' Compensation Reserve, all in accordance with law.

38. In conclusion, the School District has not created a "tax stabilization" fund in any of the years in question, nor has it improperly increased its 2010-2011 budget to make payments for workers' compensation claims. Rather, the School District has employed sound budgeting practices for all of the years in question.

39. Based on the foregoing, the appeal should be dismissed.

  
Bruce H. Singer

Sworn to before me this  
6<sup>th</sup> day of July, 2011.

  
Notary Public

**Carol Adelberg**  
Notary Public, State of New York  
No. 01AD6183535  
Qualified in County of Nassau  
My Commission Expires 03/17/2012