April 12, 2002

Stephen Mushinski, Esq.
Parker, McCay & Criscuolo
Three Greentree Centre, Suite 401
Route 73 & Greentree Road
Marlton, NJ 08053

Kevin M. O'Dowd, DAG
Department of Law and Public Safety
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, NJ 08625

Dear Counsel:

Upon review of the papers filed in the matter entitled *Board of Education of the Rancocas Valley Regional High School District, Burlington County v. William L. Librera and Walter Keiss, Burlington County Superintendent of Schools,* Agency Dkt. No. 30-2/02, wherein the Board requests that I revise the County Superintendent's recent reapportionment of its nine seats among its five constituent districts, I have determined to dismiss the Petition of Appeal, for the reasons set forth below.

The petitioning Board indicates that its current apportionment provides for the following member seating: one seat for Eastampton Township, one seat for Hainesport, two seats for Lumberton, three seats for Mount Holly and two seats for Westampton. (Petition of Appeal at 2) However, on December 14, 2001, the County Superintendent duly notified the Board that, based on the 2000 federal census, and pursuant to *N.J.S.A.* 18A:13-8 and 13-9, Eastampton Township would *gain* one seat and Mount Holly would *lose* one seat on its nine-member board, effective with the April 2002 election. Petitioner asserts that, in reapportioning its member seats, the County Superintendent applied a mathematical formula that is inconsistent with the law, which requires that apportionment be made according to the number of inhabitants in the respective districts. (*Ibid*.)

In lieu of an Answer, respondents filed a Motion to Dismiss the Petition, relying, for purposes of the motion, on the facts as pled by petitioner. Respondents contend that the County Superintendent's calculations were properly based upon the United States Bureau Census 2000 Redistricting Data Summary, which reflected a 1.7% decline in Mount Holly's population and a 30.1% growth in Eastampton's population since the 1990 census. Based on these shifts, a reapportionment analysis was performed, pursuant to *N.J.S.A.* 18A:13-9, utilizing the 2000 census figures.

Respondents assert that the particular method of apportionment is, according to statute, left to the discretion of the County Superintendent. *N.J.S.A.* 18A:13-8. Thus, in order to effectuate the statute's goal of apportioning board member seats "as nearly as may be according to the number of [their]

inhabitants," *N.J.S.A.* 18A:13-8, an "equal proportions" formula was utilized to calculate board membership for regional school districts with nine or less constituent districts. (Motion at 6-7) As respondents explain, the equal proportions method begins with assigning each school district one representative. Thereafter,

> [t]he population of each municipality is divided by the square root of 2, 6 and 12 (geometric mean) *** until the number of quotients so calculated for each community exceeds by at least one (1) the number of additional representatives to be allotted to that municipality.
> *** [All quotients are arranged] in sequence beginning with the largest to form a priority list.
> *** The remaining numbers are allotted to the municipalities having the highest positions on the priority list. (Motion at 7)

Respondents contend that such a reapportionment plan should not be disturbed, absent a "positive showing of individual discrimination or other constitutional deficiency," (*Id*. at 7, *citing Davenport v. Apportionment Commission of the State of New Jersey*, 65 *N.J.* 125, 135 (1974)) Respondents further note that the equal proportions method has been adopted by the United States Congress. (Motion at 8) Finally, respondents argue that "[p]etitioner has presented no facts to support a conclusion that a reapportionment calculation based on the enabling statute or organizational resolution would have produced a membership apportionment result which differs from respondents' reapportionment calculation which is presently at issue." (*Id*. at 10-11)

To this, petitioner counters,

> Had the legislature intend[ed] the County Superintendent to utilize the equal proportions method in making the apportionment of Board members among constituent districts in a regional district of nine or less constituent school districts, it would [have] explicitly done so in 1972. It is noteworthy that the legislature revisited N.J.S.A. 18A:13-8 in 1979 and 1992. Again, the legislature left untouched the method that the County Superintendent was to utilize in proportioning members of a regional Board of Education consisting of nine or less constituent school districts. (Petitioner's Brief in Opposition to the Notice of Motion at 3)

Thus, petitioner reasons that the County Superintendent was unauthorized to use a methodology for apportionment that is *not* expressly authorized in the statute and his decision "to deviate from these specific statutory interpretation[s] as to methodology is arbitrary and capricious." (*Ibid.*) By contrast, using a "strict population" methodology,[1] the current apportionment of the Rancocas Valley Regional School District Board would not change. This method, petitioner adds, conforms to the resolution wherein the regional district was authorized and, therefore, respects the will of the voters. (*Ibid*.) Alternatively, petitioner proposes the Huntington Hill method, upon which the equal proportions method is based, and contends that applying the Huntington Hill method would result in the same apportionment as currently exists. (*Ibid*.) Petitioner further asserts that it is entitled to discovery in this matter "to determine critical facts such as what methodology was utilized for apportionment in following the 1990 census [and] why the County Superintendent utilized the equal proportions method instead of the Huntington Hill method***." (*Id*. at 4)

---

[1] With this method, a constituent district's population is divided by the total population and the result is then multiplied by the number of available seats.

Upon review of the parties' positions, I note that the enabling statute, in pertinent part, provides, with respect to regional boards of education:

> If there are nine or less constituent districts, the members of the board of education of the regional district shall be apportioned by the county superintendent or county superintendents of the county or counties in which the constituent districts are situate, among said districts as nearly as may be according to the number of their inhabitants except that each constituent district shall have at least one member. *N.J.S.A.* 18A:13-8.

I am not persuaded by petitioner's assertion that use of the "equal proportions" methodology is improper because the enabling statute does not expressly authorize it. Indeed, the statute does not identify any particular method for effectuating a reallocation of board seats where such is made necessary by promulgation of a federal census, specifying only that board member seats must be reapportioned "*as nearly as may be according to the number of [the constituents'] inhabitants.*" *N.J.S.A.* 18A:13-8 (emphasis added) Furthermore, petitioner does not dispute respondents' assertion that the 2000 census showed an *increase* in Eastampton's population and a *decline* in Mt. Holly's population. The reapportionment made the by the County Superintendent clearly satisfies the statutory provision that seats be assigned to constituent districts "as nearly as may be according to the number of their inhabitants." I find, therefore, that the Burlington County Superintendent neither abused his discretionary authority nor acted in contravention of law when he used the "equal proportions" method to reapportion board member seating among petitioner's constituents following the 2000 census. I further find that the material facts necessary to decide this matter are already on record, so that there is no need for discovery for the purpose stated by petitioner.

Accordingly, respondents' motion is GRANTED and the within Petition of Appeal is hereby DISMISSED.[2][3]

Sincerely,

William L. Librera, Ed.D.
Commissioner

c: County Superintendent
        James M. Vogdes, III, Esq.

---

[2] On April 5, 2002, the Township of Eastampton, Thomas Czerniecki and Andra McGonigle, citizens and residents of the Township, filed a request to intervene, contending that they have an interest in the within proceedings and that the mathematical calculation applied by respondents was consistent with the law. (Petition to Intervene at 2, 3) Because of the decision reached herein, it is unnecessary to address the request, on which petitioner and respondents take no position.

[3] This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.,* within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.