

July 22, 2002

Frank P. Cavallo, Jr., 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:

I have reviewed the papers filed pursuant to the Board's request for a stay 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 petitioner requests a stay of my decision issued April 12, 2002, pending review of its appeal before the State Board of Education.

By way of background, I note that on December 14, 2001, the Burlington County Superintendent duly notified the petitioning Board that, based on the 2000 federal census, and pursuant to *N.J.S.A.* 18A:13-8 and 13-9, its nine seats would be reapportioned among its five constituent districts in the following manner: Eastampton Township would *gain* one seat and Mount Holly would *lose* one seat on its board, effective with the April 2002 election. Thereafter, on April 12, 2002, prior to the election, I dismissed the Board's petition to revise the County Superintendent's determination. On May 22, 2002, the Board requested a stay of that decision, pending its appeal before the State Board of Education.

The Board initially explains that, notwithstanding the County Superintendent's December determination, based upon its appeal then pending before me, "the ballot on which the electorate voted in the April 16, 2002 Board of Education election included all three Board of

Education seats from the Township of Mount Holly as well as two Board of Education seats from the Township of Eastampton***.” (Certification of Counsel in Support of Motion for Stay at 2) Thus, by the time my decision was issued on April 12, 2002 “the official ballot had been approved, mailed to the voters and the voters were going to the polls within days of that decision. As a result, three individuals were elected to positions on the Board of Education from the Township of Mount Holly.” (*Id.* at 3)

As required by *N.J.A.C.* 6A:3-1.15, a motion to stay a Commissioner’s decision must be based upon the criteria set forth for the granting of interim relief, *i.e.*, *Crowe v. DeGioia*, 90 *N.J.* 126 (1982). A stay may be granted where necessary to prevent irreparable harm, where the legal right underlying the movant’s claim is settled, where there is a likelihood of success on the merits and where the relative hardship to the moving party favors granting such relief. *Id.* at 132-134.

In its motion, the Board asserts that it will suffer irreparable harm if I do not grant a stay of my April 12th decision, in that “the will of the electorate which voted for the three members from the Township of Mount Holly as representative to the Board of Education, will be thwarted.” (Petitioner’s Brief at 1) The Board adds,

If the position of the County Superintendent of Schools is upheld, the entire election process would not only be overturned, but, it would require a special election to be conducted wherein the voters of the Township of Mount Holly would be requested to choose among its three long-standing and recently re-elected representatives to the Board of Education.” (*Id.* at 1-2)

Further, the Board claims that the legal right underlying its claim is settled, contending, in pertinent part:

While there is a genuine dispute as to whether or not the respective positions espoused by the County Superintendent of Schools or the Board of Education is correct, there is little doubt that the law in this matter is well settled. Further, there is little doubt that the statutory provisions governing reapportionment of a regional school district, *N.J.S.A.* 18A:13-8 et seq. were not followed. Finally, with regard to this issue, it is the Petitioner’s claim that the manner in which the apportionment was conducted violated the statutory provisions. (*Id.* at 2)

In so arguing, the Board affirms that “it still remains a fact that the appropriate method of equal proportions was not utilized,” and the only method approved by the State of New Jersey and the Congress of the United States was the Huntington Hill method for calculating equal proportions. (*Ibid.*) For this reason, the Board insists that it has “a [sic] excellent likelihood on [sic] prevailing on the merits of the underlying claim.” (*Ibid.*)

Finally, the Board avers that, upon balancing the equities in this matter, it will suffer greater harm than respondent if the requested relief is not granted. Alternatively, if granted the stay, the Board will be permitted to operate with a ten-member Board of Education until such time as all the appeals have been exhausted. Thereafter, and depending upon the outcome of its appeal, “either the Township of Eastampton represented [sic] to the Board of Education will be removed or a special election will be conducted in the Township of Mount Holly to determine which two of the duly elected Board of Education members will remain as representatives from the Township of Mount Holly.” (*Ibid.*) In either event, the Board contends, the respondent suffers no harm.

Upon review, I initially note that the decision issued by the Burlington County Superintendent of Schools on December 14, 2001 was a valid and binding determination in full force and effect *unless and until* that decision was stayed or overturned on appeal. Therefore, to the extent that action was taken in contravention of the County Superintendent’s decision by willful preparation of a three-seat ballot and notification to voters to “vote for three” representatives to the Mount Holly Board (Certification of Counsel in Support of Motion for Stay at 3), such action was unlawful.¹ Indeed, by taking action contrary to the County Superintendent’s decision, the district *placed itself* in a position where it now claims irreparable harm may result absent a stay.

I further recognize that “temporary relief should be withheld when the legal right underlying [petitioner’s] claim is unsettled.” *Crowe* at 133. In this connection, although the Board acknowledges that “there is a genuine dispute as to whether or not the respective positions espoused by the County Superintendent of Schools or the Board of Education is correct,***” (Petitioner’s Brief at 2), it concurrently argues that, notwithstanding this dispute, the law is settled, since “there is little doubt that the statutory provisions governing reapportionment of a regional school district *** were not followed, [and] *** the manner in which the apportionment was conducted violated statutory provisions.” (*Id.* at 2) Clearly, however, I have not viewed the law as settled in the manner described by the Board. To the contrary, I have previously found 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.” (*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. 30-2/01, April 12, 2002 at 3*)² Moreover, reiterating by reference the reasons stated in my decision of April 12th, I find that petitioner has not demonstrated a likelihood of prevailing on the merits of its appeal.

¹ The Board’s suggestion that such unlawful action was necessary because a decision on its appeal was not issued until April 12, 2002 (*Id.* at 2, footnote 1) is disingenuous. The Board did not submit a petition contesting the County Superintendent’s decision of December 14 until February 5, 2002, and when it did appeal, it did not request a stay of that decision.

² Notably, although petitioner contends “it still remains a fact that the appropriate method of equal proportions was not utilized,” (Brief at 2) the ballot for representatives from the Township of Eastampton was prepared for *two* seats, in accordance with the County Superintendent’s December 2001 determination, which appears to undercut petitioner’s proffered disavowal of the calculation method utilized by the County Superintendent.

Notwithstanding these findings, I am mindful that three individuals were duly elected by the voters to represent the Mount Holly Board of Education on the Rancocas Valley Regional Board for full terms, and were sworn in and seated accordingly. I am further mindful that, given the burden and potential for instability caused by requiring the holding of a special election while appeal is pending, petitioner seeks interim relief to maintain the *status quo* pending decision on the merits by the State Board of Education.

Under the unusual circumstances of this matter, then, the appropriate interim resolution appears to be one that strikes a fair balance between honoring the will of the voters and complying with the authorizing statute which permits only nine members on a regional board consisting of nine or fewer constituent districts (*N.J.S.A.* 18A:13-8). Therefore, I direct that the Rancocas Board of Education shall, on an interim basis pending decision by the State Board of Education, function in all respects as if it were a nine-member board, but shall retain the three representatives from Mount Holly who were elected in April 2002 with their seats weighted at .66, .66 and .67, respectively, so that these seats do not in the aggregate exceed the number allotted to Mount Holly in the reapportionment and the total number of seats on the regional Board does not exceed nine.³

Accordingly, the Board's motion for stay is **GRANTED** to the extent that the elected members representing Mount Holly shall be permitted to remain seated pending review of this matter on its merits before the State Board of Education, *with their seats weighted as set forth herein*, and **DENIED** to the extent that the Board may continue as a ten-member Board with three full seats allotted to Mount Holly.

Sincerely,

William L. Librera, Ed.D.
Commissioner

Date of Mailing: 7/23/02

c: Burlington County Superintendent
State Board Appeals
James M. Vogdes, III, Esq.

³ In the event a vacancy arises prior to the State Board's review of this matter, the Board shall leave such vacancy unfilled and return the two remaining members to full, unweighted voting status for the duration of their terms.