

BOARD OF EDUCATION OF THE BOROUGH :
OF MILFORD, HUNTERDON COUNTY, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY STATE DEPARTMENT OF : DECISION ON REMAND
 EDUCATION, :
 :
 RESPONDENT. :

SYNOPSIS

The petitioning Board requested that the Department recalculate the district’s core curriculum standards aid (CCSA) for the years 2002-2003, 2003-2004, and 2004-2005, pursuant to *N.J.S.A.* 18A:7F-15, claiming that the Department had erroneously combined the population of Milford with sections of Holland and/or Alexandria Township, to the effect that the local share formula used in the calculation did not accurately reflect the district’s income wealth and resulted in an underestimate of the Board’s State Aid entitlement for the above years.

The ALJ found that there were no material facts in dispute, stating that the material issues the petitioning Board argues are disputed facts actually concern interpretations of relevant statutes—including CEIFA and the FY05 Appropriations Act—and do not bar a conclusion that summary decision is appropriate in this matter. Further, the ALJ found that the petitioner failed to appeal the 2002-2003 and 2003-2004 aid calculations within 90 days as required by *N.J.A.C.* 6A:3-1.3(d), and found that the petitioner’s reliance on a statutory provision which permits a district to appeal the amount of its CCSA on the basis of the calculation of income within the local formula is misplaced. The ALJ concluded that: the Department is not authorized to recalculate State aid pursuant to CEIFA provisions which have been suspended by the Legislature for the duration of FY 2005; and the FY 2003 and FY 2004 calculations cannot be appealed because they are beyond the 90-day time limitation and there is no overriding public interest that justifies a relaxation of the rule. The ALJ granted respondent Department’s motion for dismissal, and ordered the petition dismissed.

Upon a full and independent review of this matter, the Deputy Commissioner, to whom this matter has been delegated for decision pursuant to *N.J.S.A.* 18A:4-33, identified two threshold issues: whether the challenge to the Department’s calculations of the CCSA entitlement for school years 2002-2004 was timely filed, and whether the FY05 Appropriations Act precludes the Department from applying the provisions established in *N.J.S.A.* 18A:7F-15. The Deputy Commissioner held that: the greater public interest lies with the enforcement of the 90-day rule and the dismissal of the Board’s claims with respect to its appeal of its CCSA award for the 2002-2004 school years; and the effect of the FY05 Appropriations Act was the suspension of the aid calculation under CEIFA and the challenges thereto based on *N.J.S.A.* 18A:7F-15. The Department’s motion for summary decision was granted and the petition dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 738-05
(EDU 6012-04 ON REMAND)
AGENCY DKT. NO. 178-5/04

BOARD OF EDUCATION OF THE BOROUGH :
OF MILFORD, HUNTERDON COUNTY, :
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The record and the Initial Decision on Remand issued by the Office of Administrative Law (OAL) have been reviewed. The Milford Board's (Board) exceptions and the Department of Education's (Department) reply thereto were submitted in accordance with *N.J.A.C. 1:1-18* and were considered by the Deputy Commissioner to whom this matter has been delegated for decision, pursuant to *N.J.S.A. 18A:4-33*, in making his determination.¹

In its exceptions, the Board argues that the Initial Decision on Remand fails to fulfill the remand directive to cure the deficiencies identified by the Deputy Commissioner. (Board Exceptions at 3) The Board further asserts that the revised decision remains inadequately grounded in fact or law to justify the granting of summary decision. (*Ibid.*) Specifically, the Board alleges that the revised decision does not acknowledge that there are material facts in dispute which would preclude the granting of summary decision in this matter and claims that the revised decision still improperly disregards the nature of the relief sought. (*Id.* at 3, 5)

¹ Both parties attached a copy of the exceptions each filed in response to the previous Initial Decision in this matter, OAL DKT. NO. EDU 6012-04, dated December 15, 2004. Although not summarized in this determination, the Deputy Commissioner emphasizes that these previously submitted exception arguments were thoroughly reviewed and considered in the course of the Deputy Commissioner's review of the complete record in this matter.

With respect to its claim that material facts in this matter are in dispute, the Board points out that there is clearly a dispute as to whether its Core Curriculum Standards Aid (CCSA) was calculated correctly and that this factual issue is relevant because this petition was filed under *N.J.S.A.* 18A:7F-15, which permits a district to challenge the calculation of its CCSA if the calculation of income within the local share formula does not accurately reflect a district's income wealth. (*Id.* at 4) The Board notes that it included voluminous statistical and documentary records, calculations and arguments (attached to its previous exceptions as Exhibit A) in support of its contention that the Department utilized inaccurate factual data in calculating its local share for the 2001-02 school year, but that it did not -- and could not -- submit a record of the data and methods actually used by the Department. (*Id.* at 4-5) The Board points out that, whether the Department's calculation was erroneous or not, the calculation for 2001-02 has been relied upon every year since. (*Id.* at 5) In that the submission of records to support the Department's assertion that the local share was not miscalculated is in the purview of the Department and it has not submitted these records, the Board contends, further discovery is necessary to resolve this dispute and other factual disputes. (*Ibid.*)

The Board also avers that the revised decision does not accurately address the relief sought in this matter, claiming that "(a) correcting the Department's calculation, if found to be factually inaccurate, and (b) restoring funds improperly withheld as a result, are two distinct forms of relief, both of which operate independently of the Appropriations Act." (*Id.* at 5-6) The Board contends that the funds appropriated by the Legislature for the current and most recent prior fiscal years are irrelevant to ensuring that any mistake previously made in calculating the District's CCSA entitlement is not compounded going forward. (*Id.* at 6) Moreover, the Board argues that its CCSA calculation can be reviewed and corrected independently of the Appropriations Act in that the Appropriations Act may only be deemed to

have superseded other funding statutes for the duration of that Act, and only upon a clear showing that the two legislative measures are repugnant or inconsistent. (*Ibid.*) Thus, the Board asserts, the Administrative Law Judge's (ALJ) finding that the ability to correct a CCSA calculation cannot coexist with the language in the FY05 Appropriations Act is unsupported. (*Ibid.*) Moreover, the Board maintains, the FY05 Appropriations Act does not contain language affirmatively prohibiting the Department from investigating and correcting a mistake. (*Ibid.*) Additionally, the Board claims that the ALJ's conclusion that the Department does not have any authority to transfer revenue between or among State revenue funds is directly contrary to the express legislative provision of the FY05 Appropriations Act, which authorizes the Director of the Department's Division of Budget and Accounting to transfer revenues from the General Fund into the Property Tax Relief Fund -- the fund from which the aid in question is drawn -- if appropriations in that fund should exceed available revenues. (*Id.* at 7)

The Board further contends that the ALJ erred in rendering his revised decision because he based his findings on the parties' exceptions, rather than the underlying pleadings and exhibits. (*Id.* at 7-8) In support thereof, the Board points out that the ALJ found in his revised decision that the Board had alleged three disputed facts, whereas the Board actually raised a panoply of pertinent facts in its petition; the disputed facts raised in its exceptions were only examples of disputed facts that would prevent the granting of summary judgment. (*Id.* at 8) As examples of facts that have not yet been addressed, the Board claims that it "has alleged a series of facts to show that the Divisions of Taxation and School Finance have improperly combined portions of the populations of the Townships of Holland and Alexandria, both of which share Milford's zip code, and both of which are wealthier than Milford, and that, as a result, the relative CCSA entitlements allotted to each of these three municipalities are vastly

disproportionate to what they should be, given their relative population and socioeconomic status.” (*Ibid.*)

Turning to whether the 90-day time limit for the filing of an appeal to the Commissioner should be strictly construed in light of the Board’s claims of a continuing violation of public rights, the Board avers that the cases relied upon by the ALJ, *i.e.*: *Portee, supra*, and *Kaprow, supra*, involve claims brought by individuals, not claims brought -- as in this case -- on behalf of the public. (*Id.* at 9) Citing *Brunetti v. Borough of New Milford*, 68 N.J. 576, 586 (1975), the Board submits that “the State Supreme Court specifically found that exceptions to a procedural limitations period are warranted where the matter involves ‘important *public rather than private* interests which require adjudication *or clarification*.’” (emphasis supplied in text) (*Ibid.*) In further support of its argument, the Board quotes the Supreme Court in *Reilly v. Brice*, 109 N.J. 555, 558 (1988) wherein the Court found that “one of the well-recognized exceptions warranting relief from [a] statute of limitations is based on consideration of public rather than private interests.” (emphasis supplied in text) (*Id.* at 10)

Additionally, the Board points to *Ironbound Committee Against Toxic Waste v. Board of Chosen Freeholders*, 230 N.J. Super. 133 (App. Div. 1989) and *Bernstein v. Krom*, 111 N.J. Super. 559 (App. Div. 1970) in support of its contention that a waiver of procedural limitations is appropriate in disputes that involve or implicate the expenditure of public funds, and specifically points out that neither of these require or suggest that the doctrine is contingent upon an explanation for the delay in filing from the one seeking vindication of a public right. (*Ibid.*) Moreover, the Board argues, the ALJ’s finding that it has not set forth the harm, if any, the taxpayers, students or administration faced due to the State aid awards in FY03 and FY04 is irrelevant and inaccurate as this claim involves an allegation, brought under N.J.S.A. 18A: 7F-15, that the calculation of income used to determine the Board’s local share under the statutory

formula does not accurately reflect the District's income and that a portion of the CCSA State Aid to which the District was rightfully entitled was erroneously attributed to the Holland Township and Alexandra Township school districts. (*Id.* at 11)

Finally, the Board submits that the ALJ failed to grant all legitimate inferences in favor of the Board in determining to grant the Department's motion to dismiss, which would include that: 1) the CCSA was miscalculated; 2) the District was harmed as a result; 3) the Department was authorized to revisit and redo the calculation notwithstanding the particular amount of aid the State Legislature appropriated to a particular fund in the annual budgets for the years in question; 4) the Department was authorized under the Appropriations Act to transfer funds, if necessary to rectify the insufficient award; and 5) it would be possible in this or future budget years to provide prospective and/or retroactive relief. (*Ibid.*) The Board, therefore, concludes that the ALJ failed to justify an award of summary decision to the Department, pursuant to *Brill, supra*, and contends that the ALJ's determination is still insupportable in fact or at law, was reached in error, and must be rejected. (*Id.* at 12)

In response, the Department contends, *inter alia*, that the ALJ properly determined that there are no material facts in dispute, noting that the crux of the parties' dispute concerns the interpretation of relevant statutes, including the Comprehensive Education Improvement and Financing Act (CEIFA), *N.J.S.A. 18A:7F-1 et seq.* and the FY05 Appropriations Act. (Department's Exceptions at 1-2) The Department asserts that "the Legislature intended to suspend State aid calculations pursuant to CEIFA for the 2002-2003, 2003-2004, and 2004-2005 school years," and that, because of these Legislative mandates, the Department was obligated to limit school districts to the same CCSA they received in the prior year. (*Id.* at 4) The Department concludes that, because the Board does not contest that it was

provided the same CCSA aid in 2002-2003, 2003-2004 and 2004-2005, the ALJ correctly determined that there are no material facts in dispute. (*Ibid.*)

With respect to the Board's assertion that the ALJ erred by failing to accept as true its contentions that the income and/or property values used by the Department in the calculation of CCSA are wrong and, therefore, are material facts in dispute, the Department points out that the ALJ was only required to view the evidence in the light most favorable to the non-moving party, which does not mean that he was required to dispense with his ability to review the facts and law relevant to the dispute. (*Id.* at 4-5) Even giving the Board every inference, the Department argues, it is unreasonable to believe that the Board would wait three years to file a claim against the State if it believed that its CCSA calculation was incorrect and its taxpayers were being unfairly burdened. (*Id.* at 5) Moreover, the Department asserts, even if the ALJ had accepted the Board's claim that the income and property values utilized in calculating the State aid in 2001-2002 were erroneous, that claim is time-barred. (*Ibid.*) Thus, the Department reasons, the income and property values utilized for the 2001-2002 CEIFA calculation which forms the basis of the CCSA award for the 2002-2003, 2003-2004 and 2004-2005 school years are not material facts in dispute. (*Ibid.*)

Additionally, the Department avers that there is no need for discovery in that the Board does not dispute that it received the amounts of CCSA indicated in the Initial Decision and it is time-barred from challenging the CEIFA calculation for the 2001-2002 school year which formed the basis for CCSA funding in subsequent years. (*Id.* at 5-6) The Department claims that it is clear that the Board's dissatisfaction is not with some purported miscalculation of CCSA, but is a dispute involving legal issues concerning the suspension of CEIFA and the inability of the Department to provide any additional aid to Milford. (*Id.* at 6) Thus, the

Department contends, there are no material facts in dispute, the Board is not entitled to the relief it seeks and its petition must be dismissed. (*Ibid.*)

In support of the ALJ's determination that the Board's appeal of the 2002-2003 and 2003-2004 CCSA awards were time barred pursuant to *N.J.A.C.* 6A:3-1.3(d), the Department cites numerous cases in support of its contention that the 90-day time limitation for filing an appeal has been strictly applied by the Commissioner, the State Board and the courts, and is only relaxed, pursuant to *N.J.A.C.* 6A:3-1.16, in instances where there is a compelling reason, where judicial review of an informal administrative determination is sought, where there is a substantial constitutional issue or where there is an issue of fundamental public interest beyond the parties themselves. (*Id.* at 6-8) Citing *Sloan v. Klagholz*, 342 *N.J. Super.* 385, 394 (App. Div. 2001), "holding that the imposition of a greater tax burden upon local property owners does not implicate the Thorough and Efficient Education Clause of the New Jersey Constitution," the Department avers that the Board's challenge of its State aid award does not implicate any constitutional issues nor dispute an informal administrative determination. (*Id.* at 8) Moreover, the Department argues, the Board's claims do not raise any issues of substantial public interest beyond the parties themselves that would warrant the relaxation of the 90-day time limitation. (*Ibid.*)

The Department points out that the Board does not dispute that it was provided adequate notice of the CCSA awards for the 2002-2003 and 2003-2004 school years and it has failed to provide any explanation as to why it was unable to file its appeal within 90 days of its receipt of notice of the awards for each of those years. (*Id.* at 8-9) The Department also points out that there has been no allegation by the Board that its students failed to receive a thorough and efficient education. (*Id.* at 9) Moreover, the Department submits that, although the District taxpayers understandably have a concern to ensure that they are not paying more than necessary

for education, their interest is not paramount to the State's other taxpayers who have a right to have issues of school funding and State aid resolved in a timely fashion so that they can finalize their own communities' budgets from year to year. (*Ibid.*)

The Department also asserts that the cases cited by the Board in support of its argument that this dispute concerns public issues, are not germane to the issues on appeal because all of the cases cited concern limitations applicable to actions in lieu of prerogative writs. (*Id.* at 9-10) In explanation, the Department contends that the rules for the filing of prerogative writs have no bearing upon the regulatory process governing disputes arising under the school laws and "actions in lieu of prerogative writs only apply to municipal actions, as all challenges to State agency actions or regulations must be made to the Appellate Division." (*Id.* at 10) Citing *Sloan, supra*; *Board of Education of the Township of East Brunswick, Middlesex County v. New Jersey State Department of Education*, decided by the Commissioner August 10, 2001; and *Board of Education of the City of New Brunswick, Middlesex County v. New Jersey State Department of Education the Department*, decided by the Commissioner August 31, 2004, the Department additionally submits that the ALJ's determination that the Board's appeal of its 2002-2003 and 2003-2004 CCSA awards was time barred should be upheld because that determination is consistent with other determinations by the Commissioner involving school funding. (*Id.* at 10-11)

With respect to the Board's challenge to the 2004-2005 calculation of the CCSA, the Department sets forth its position that the FY2005 Appropriations Act clearly suspended CEIFA for the 2004-2005 school years and that funding statutes are subject to the allocations allowed for by the annual Appropriations Act in that, as found in *Hammonton Board of Educ. v. New Jersey Dep't of Educ. et al*, (App. Div. 2003) (A-3836-01T5), slip op. at 16, where "statutes which require State funding for mandated programs are irreconcilable with the annual

Appropriations Act, an ‘implied suspension’ of the funding statutes occurs for the life of the fiscal year covered by the Appropriations Act.” (*Id.* at 11-12) Additionally, the Department notes that the “implied suspension” reasoning in *Hammonton, supra*, was applied by the Commissioner in his determination dismissing the challenge to the amount of aid awarded under CEIFA for the 2003-2004 school year in *Board of Education of the City of Woodbury, Gloucester County v. New Jersey Department of Education, et al*, decided by the Commissioner April 28, 2004. (*Id.* at 13)

The Department also argues that the FY05 Appropriations Act has the full effect of law and expresses the Legislature’s intent and points out that the language in the FY05 Appropriations Act stating that each district shall receive no less of a total State aid amount payable than it received in the 2002-2003 school is identical to the language at issue in *Hammonton*, with the exception of the school year. (*Id.* at 12) The Department thus concludes that the Legislature intended to limit CCSA and other aid to each district to the amount of aid received the previous year. (*Ibid.*) Since the Legislature appropriated the same amount of CCSA in FY05 that it had appropriated in FY04 and FY03, respectively, the Department claims that it cannot increase the award of aid in one district without lowering the amount of aid to another district, which is strictly prohibited by the Legislature. (*Id.* at 12-13)

Moreover, the Department claims the Board’s reliance on *N.J.S.A. 18A:7F-15* to support its assertion that the Department can review and recalculate the income figure used in the State aid award for FY05 is misplaced in that: 1) since the Department’s position is that it cannot change the amount of CCSA awarded for the FY05 school year, and the Department did not calculate the income within the local share formula for the FY05 school year, the provision under *N.J.S.A. 18A:7F-15* which permits a district to challenge its district income figures must also be deemed suspended; and 2) since the Department’s position is that the Board’s challenge

of the State-aid awards for the FY01 and FY02 school years is time barred, it follows that the income and property values utilized in the 2001-2002 school year, which was the last time State aid was based upon a CEIFA calculation, can not be reviewed. (*Id.* at 14)

Finally, with respect to the Department's ability to transfer funds between the General Fund and the Property Tax Fund, the Department contends that it is the Department of Treasury that is responsible for the oversight of the State budget, and the Office of Management and Budget within that Department, that may make transfers between appropriation and revenue accounts in the General Fund for the entire State budget. (*Ibid.*) The Department avers that "the Appropriations Act has not granted any authority to, nor is there any statutory authorization for, the Department to transfer funds between or among State revenue funds." (*Id.* at 15)

Upon a thorough and independent review of the record in this matter, the Deputy Commissioner concludes that there are two threshold issues which must initially be determined, *i.e.*: 1) whether the challenge to the Department's calculations of the Board's CCSA entitlement for the 2002-2003 and 2003-2004 school years was timely filed; and 2) whether the FY05 Appropriations Act precludes the Department from applying the provisions established in *N.J.S.A. 18A:7F-15*.

On May 14, 2004, the Board filed a Verified Petition of Appeal, claiming that, possibly as a result of identical zip codes, the Department had erroneously combined the population of Milford with more prosperous sections of Holland and/or Alexandria Township resulting in an underestimate of the Board's State Aid entitlement for the 2002-2003, 2003-2004 and 2004-2005 school years. (Board's Brief in Opposition to Motion to Dismiss at 10) The parties concur that the last time the Department conducted CCSA calculations was the 2001-2002 school year and that in the Appropriations Acts for the subsequent years, FY03, FY04

and FY05, the Legislature limited the CCSA funding for each school district to that which had been received in the prior year.

The Board does not dispute that its appeal of its CCSA award for the 2002-2003 and 2003-2004 school years was not filed within the 90-day limitation set forth at *N.J.A.C. 6A:3-1.3(d)*. Instead, the Board argues that the alleged CCSA calculation error for the 2001-2002 school year has been perpetuated each year since and is thus a “continuing violation of public rights.” (*Id.* at 20) The Deputy Commissioner rejects this argument in that there has been no claim that the District’s students were deprived of a thorough and efficient education, nor has it identified the violation of any protected right.

Rather, the within matter is analogous to *North Plainfield Educ. Ass’n v. Bd. of Educ.*, 96 *N.J.* 587 (1984), wherein teachers challenged their placement on a salary guide and argued that their failure to file within the 90-day limitation period from notification of such placement should not preclude them from actions for relief in the subsequent years because the withholding of the increment constituted a continuing violation. The Supreme Court in that case found:

The teachers’ asserted right to advance an additional step on the 1980-81 salary guide depends on the propriety of the Board’s action in not advancing them on the 1979-80 guide. The time bar of the original action also precludes the dependent action for relief in future years.

Nor does the withholding of the increment constitute a continuing violation. Such a claim, which is associated with the assertion of discrimination in employment, has no relevance to this case. Furthermore, the fact that the teachers will always lag one step behind is not attributable to a new violation each year, but to the effect of an earlier employment decision, one that is protected by the regulatory period of limitations. *North Plainfield Educ. Ass’n at 595.*

Numerous decisions concerning the 90-day time limitation have been litigated and the courts have consistently held that the rule is mandatory and that the 90-day time period begins to run on the date that notice is received of the action taken. *See Nissman v. Bd. of Educ. of the Twp. of Long Beach Island*, 272 N.J. Super. 373, 380 (App. Div. 1994), *cert. denied* 137 N.J. 315 (1994); *Wynne v. Tillery, Camden County Superintendent of Schools et al.*, 96 N.J.A.R.2d (EDU) 995; and *Portee v. Newark Board of Education*, 94 N.J.A.R.2d (EDU) 381. Moreover, the 90-day limitation period has been strictly applied in other determinations by the Commissioner involving school funding. *See Sloan, supra; Board of Education of the Township of East Brunswick, supra; and Board of Education of the City of New Brunswick, supra.* Moreover, the Deputy Commissioner does not find that the factual circumstances set forth in the Board's pleadings constitute grounds for relaxation of the 90-day rule. No constitutional issues are involved in the matter, nor does it present issues of significant public interest beyond the parties. On the contrary, the Deputy Commissioner herein determines, as did the Commissioner in *LeMee v. Board of Education of the Village of Ridgewood*, 1990 S.L.D. 663, 673, that the greater public interest lies with the enforcement of the 90-day rule and the dismissal of the Board's claims with respect to its appeal of its CCSA award for the 2002-2003 and 2003-2004 school years.

Turning to the Board's appeal of its CCSA State aid for the 2004-2005 school year, the Deputy Commissioner notes that the amount appropriated by the Legislature for State aid to school districts for the 2004-2005 school year was the same as the amounts appropriated for the three previous years, and the FY05 Appropriations Act specifically states:

Notwithstanding any other law or regulation to the contrary, each district shall receive no less of a total State aid amount payable for the 2004-2005 school year than the sum of the district's total State aid amount payable for the 2003-2004 school year for the

following aid categories: Core Curriculum Standards Aid ***
(P.L. 2004, c. 71 at 105)

Given that the State aid appropriated to school districts for the 2004-2005 school year was the same as the amounts appropriated for the previous three years and the language in the FY05 Appropriations Act requires that no district receive less CCSA than the previous year, the Deputy Commissioner finds that the effect of the FY05 Appropriations Act was the suspension of the aid calculation under CEIFA and the challenges thereto based on N.J.S.A. 18A:7F-15.

As the Court found with respect to a challenge of the funding provided to the Hammonton School District by the FY03 Appropriations Act in *Hammonton, supra*:

The principle is also well established that statutes which rely on State funding are not “self-executing.” *City of Camden*, 82 N.J. at 147. Thus, even where “the Legislature has mandated a particular program, it is subject, insofar as it requires appropriations, to the Annual Appropriations Act.” *Franklin*, 225 N.J. Super. at 516. Accordingly, “the judiciary is unable to compel a requested appropriation even where a statutorily defined substantive right to the monies is established.” *City of Camden*, 82 N.J. at 148.

The current appropriations act at issue in this case, the FY03 Appropriations Act, L. 2002, c. 38 (FY03), has the full effect of law and expresses a “definite legislative intent.” *City of Camden*, 82 N.J. at 142. To the extent that the two enactments – CEIFA and FY03 – are irreconcilable, they cannot coexist. Our courts, consistent with federal statutory interpretation, have declined to apply the doctrine of “implied repeal.” *** Because appropriations acts have “a life limited to its fiscal year,” our courts have been sensitive to the impact of appropriations laws upon existing laws, choosing to characterize the effect of appropriations on standing legislation as an implied “suspension rather than an implied repeal”; however, for practical purposes, the effect is the same. (*Hammonton, supra* at 15-17)

Notwithstanding the Board’s argument that the matter herein is distinguishable from *Hammonton, supra*, because the Legislature’s definitive budgetary action affected all

school districts alike, and Hammonton did not dispute that the Commissioner had fulfilled his own respective duties by certifying Hammonton's aid in accordance with CEIFA's provisions, the Deputy Commissioner finds *Hammonton, supra* to be precisely on point with respect to the effect that the Appropriations Act has on the suspension of CEIFA State aid calculations and the ability to challenge those calculations under *N.J.S.A.* 18A:7F-15. Moreover, the Deputy Commissioner points out that, even assuming *arguendo*, that the Department did make an error in its CCSA calculation of aid for the 2001-2002 school year that has implicated funding in the 2004-2005 school year, there is no provision in the FY05 Appropriations Act whereby a correction can be made at this late date. If it were found that the Department had erroneously combined the population of Milford with more prosperous sections of Holland and/or Alexandria Township resulting in an underestimate of the Board's CCSA entitlement as claimed by the Board and State aid was increased on this basis, then there would need to be a proportionate decrease in aid to the school districts of Holland and/or Alexandria Township, which is specifically prohibited by the FY05 Appropriations Act. As noted above, the amount appropriated for CCSA aid for school districts for FY05 was the same amount appropriated for the previous year, and the FY05 Appropriations Act specifically states that no school district shall receive less CCSA aid than it received in the previous year.

Additionally, contrary to the Board's contention that the FY05 Appropriations Act authorizes the Director of the Department's "Division of Budget and Accounting" to transfer revenues from the General Fund into the Property Tax Relief Fund, such authorization is -- in point of fact -- given to the "Director of the Division of Budget and Accounting," which is, as the opening section of the Appropriations Act makes abundantly clear,

a Division within the Treasury Department.² *P.L. 2004, c.71* at 106. Neither the Department of Education nor the Commissioner is authorized by the FY05 Appropriations Act to make such transfers of funds.

Accordingly, after an exhaustive review of the arguments submitted in this matter, the Deputy Commissioner has determined that grant of summary decision to the Department is appropriate in this instance. Pursuant to *N.J.A.C. 1:1-12.5(b)* and *Contini v. Bd. of Educ. of Newark*, 286 *N.J. Super.* 106, 121-122 (App. Div. 1995) (*citing Brill v. Guardian Life Ins. Co.*, 142 *N.J.* 520 (1995)), summary decision may be granted in an administrative proceeding if there is no genuine issue of material fact in dispute and the moving party is entitled to prevail as a matter of law. In this regard, notwithstanding the Board's assertion to the contrary, there are no "material facts" in dispute in this matter. *Black's Law Dictionary, seventh edition*, at 610-611, defines "fact" as "[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation" and a "material fact" as "[a] fact that is significant or essential to the issue or matter at hand." All the issues characterized by the Board as "genuine issues of material fact" are facts related to whether its CCSA was calculated correctly. However, the instant dispute centers on whether the challenge to the Department's calculations of the Board's CCSA entitlement for the 2002-2003 and 2003-2004 school years was timely filed and what the effect is of the FY05 Appropriations Act on the implementing provisions of CEIFA and *N.J.S.A. 18A:7F-1 et seq.*, which are questions of law, not disputed "material facts."

"It is well-established that where no disputed issues of material fact exist, an administrative agency need not hold an evidential hearing in a contested case." *Frank v. Ivy Club*, 120 *N.J.* 73, 98 (1990), *citing Cunningham v. Dept. of Civil Service*, 69 *N.J.* 13, 24-25

² The Appropriations Act is additionally replete with references to the Division of Budget and Accounting in sections pertaining to appropriations in various departments. See, for example, pages 18, 19, 20, 21, 25, 29, 30, 58, 60, *etc.* It is also noted that the Department of Education's Office of Budget and Accounting is in the Division of Finance.

(1975). “Moreover, disputes as to the conclusions to be drawn from the facts, as opposed to the facts themselves, will not defeat a motion for summary judgment.” *Contini v. Board of Education of Newark*, 96 N.J.A.R. 2d (EDU) 196, 215, citing *Lima & Sons, Inc. v. Borough of Ramsey*, 269 N.J. Super. 469, 478 (App. Div. 1994); *In the Matter of the Tenure Hearing of Andrew Phillips, School District of the Borough of Roselle, Union County*, Commissioner’s Decision No. 129-97, decided March 20, 1997; and *In the Matter of the Tenure Hearing of Neal A. Ercolano, Board of Education of Branchburg Township, Somerset County*, Commissioner’s Decision No. 140-00, decided May 1, 2000. Additionally, the Deputy Commissioner agrees that the Department is entitled to prevail as a matter of law for the reasons set forth above.

Accordingly, the Department’s motion for summary judgment is granted and the petition is hereby dismissed.

IT IS SO ORDERED.³

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: June 2, 2005

Date of Mailing: June 3, 2005

³ This decision 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*