

BOARD OF EDUCATION OF THE :
TOWNSHIP OF MEDFORD, BOARD OF :
EDUCATION OF THE TOWNSHIP OF :
EVESHAM, BOARD OF EDUCATION :
OF THE LENAPE REGIONAL HIGH :
SCHOOL DISTRICT, BOARD OF : COMMISSIONER OF EDUCATION
EDUCATION OF THE TOWNSHIP OF :
LUMBERTON, BOARD OF EDUCATION : DECISION
OF THE NORTHERN BURLINGTON :
COUNTY REGIONAL SCHOOL DISTRICT, :
AND BOARD OF EDUCATION OF THE :
TOWNSHIP OF WOODLAND, :
BURLINGTON COUNTY, :
:
PETITIONERS, :
:
V. :
:
NEW JERSEY STATE DEPARTMENT :
OF EDUCATION, :
:
RESPONDENT. :
:
_____ :

SYNOPSIS

Petitioning boards of education alleged that insufficient levels of State aid had negatively impacted their ability to provide a thorough and efficient system of education (T&E) and sought individualized needs assessments by the Commissioner comparable to those ordered by the State Board for the party districts in *Bacon v. New Jersey Department of Education*. The Department moved to dismiss the petition for failure to state a claim upon which relief could be granted.

The ALJ denied the Department’s motion, finding that *Bacon* created a new cause of action enabling any board of education believing itself underfunded – not only those alleging educational inadequacy and poverty – to claim entitlement to a *Bacon*-type needs assessment. The Department requested, and was granted, interlocutory review of the ALJ’s decision.

The Commissioner rejected the Initial Order, finding that the ALJ misconstrued *Bacon* by confusing the specific relief crafted for the parties – rural districts demonstrating educational inadequacy and poverty comparable to *Abbott* districts but unlike their urban counterparts in important respects – with the State Board’s call for systemic change in the definition, assessment and funding of T&E statewide. The Commissioner held that *Bacon* neither created a new cause of action for public school districts nor eliminated alleged educational inadequacy and poverty as prerequisites to T&E claims, and thus found that petitioners failed to present a cognizable basis for contested case proceedings. The Commissioner further noted that petitioners’ concerns were appropriately addressed through implementation of the newly enacted Quality Single Accountability Continuum system for evaluation of public school districts together with the school funding formula presently being developed by the Legislature, both based on principles fully consistent with the State Board’s pronouncements in *Bacon*. The petition was 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 8762-05
AGENCY DKT. NO. 98-4/05

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This matter comes before the Commissioner by way of a request – filed by the respondent Department of Education (Department) and granted in accordance with *N.J.A.C. 1:1-14.10* – for interlocutory review of an Order of the Office of Administrative Law (OAL) denying the Department’s motion to dismiss petitioners’ appeal for failure to state a claim upon which relief can be granted.

In its request, the Department contends that the Administrative Law Judge (ALJ) erred in concluding that the State Board’s decision in *Bacon, supra*, created a new cause of action enabling any local district board of education believing itself underfunded – not only those alleging educational inadequacy and poverty by the standards of *Abbott, supra* – to claim entitlement to a needs assessment of the type

ordered for the petitioners in that matter (*Bacon* districts). The Department reiterates that: 1) no *Bacon* assessment presently exists, the Commissioner having previously recommended to the State Board that such assessment await implementation of the Quality Single Accountability Continuum (QSAC) monitoring system and anticipated new funding formula currently in development; and 2) even if a *Bacon* assessment did exist, financial need remains a determinative factor and petitioners have not pled the requisite educational inadequacy and poverty to place themselves in the same posture as the *Bacon* districts. (Department's Brief in Support of Request for Interlocutory Review at 8-15)

In reply, petitioners counter that the ALJ correctly found *Bacon* to have created a new standard for determination of thoroughness and efficiency (T&E) in New Jersey public school districts – one linked to educational rather than fiscal considerations – so that, even if the relief sought by petitioners must await development of appropriate standards, they are still entitled to claim it through the present proceeding.

Petitioners state:

It has never been contested by petitioners that there can be no assessments until standards are developed. If that development must await the QSAC standards, so be it. All that means is the relief sought will not be rendered until some undetermined time in the future. It does not mean it will never be available or that the cause of action recognized by [the ALJ] should be rejected. At most, the claim should be for (*sic*) labeled as one for a QSAC evaluation instead of a *Bacon* assessment. That is nothing more than semantics. (Petitioners' Reply at 2)

In urging the Commissioner to “give direction to the parties” as requested by the ALJ, petitioners assert that “this case presents a new chapter in New Jersey School funding [growing] out of the State Board's pronouncements in *Bacon*. Rather than dismiss the petition, the Commissioner should seize this opportunity to give the New Jersey

educational community *** needed direction on the future course of education in this state, as envisaged in *Bacon*.” (*Id.* at 3)

Upon review, the Commissioner cannot concur with the findings and conclusions of the ALJ and, consequently, rejects the recommended Order in its entirety. Instead, the Commissioner agrees with the Department that the State Board neither created a new cause of action through its direction of individual needs assessments in the *Bacon* districts nor eliminated allegations of poverty and educational inadequacy as prerequisites to cognizable T&E claims.

Initially, the Commissioner finds that the *Bacon* decision embodies two separate directives: one an order of relief arising from the State Board’s adjudication of the claims and record before it on appeal, and the other a call for systemic change arising from the Board’s concomitant exercise of its authority over the general supervision and control of public education statewide. In his reading of *Bacon*, however, the ALJ has erroneously conflated these related but distinct directives, grafting the Board’s pronouncements on the need for change in State mechanisms for definition, assessment and funding of T&E onto the particularized relief granted to the parties in the specific matter on appeal.

Properly construed, *Bacon* leaves no doubt that the individualized needs assessments granted to the party districts, and now sought by petitioners herein, represent a relief crafted in direct response to the State Board’s finding that the *Bacon* litigants – rural districts making a bid for “special needs” status akin to that of the *Abbott* districts – had demonstrated comparable levels of educational deprivation and poverty, but were sufficiently unlike their urban counterparts to have their deficiencies appropriately addressed by programs, standards and funding levels developed in response to the needs

and circumstances of the latter. Nothing expressed or implied in its decision suggests that the Board, in fashioning relief tailored to the unique situation of the parties in *Bacon*, had any intent whatsoever to establish a new, generalized cause of action whereby any district in the State might petition the Commissioner for comparable relief without even *alleging* a comparable degree of educational deprivation and poverty, instead relying – as petitioners here have done – solely on claims of negative impact resulting from an insufficient level of State aid.

Rather, it is the State Board’s second directive that addresses the concerns underlying petitioners’ appeal in this matter. As subsequently discussed, ongoing effectuation of this directive will – by operation of law – afford petitioners precisely the relief they are attempting to seek through the present litigation: individualized assessment of the thoroughness and efficiency of their districts in accordance with standards to be determined by the Commissioner consistent with *Bacon*, and a consequent level of support appropriate to their circumstances.

As the ALJ and parties recognize, regulations and performance indicators are currently being developed to implement QSAC, the Legislature’s newly enacted framework for a uniform system of evaluating public school districts and assisting with their identified needs. In the Commissioner’s view, the State Board’s proposed rules at *N.J.A.C. 6A:30* and the attendant quality performance indicators to be developed pursuant to them (see 38 N.J.R. 3378(a)) will work, in their final form and in conjunction with the State’s anticipated new funding law, *infra*, to effectuate exactly the result directed by the Board in *Bacon*: identification of the “educational components essential to the establishment of a unified system for public education that ‘will equip all of the students of this state to perform their roles as citizens and competitors in the same

society’ ” (*Bacon, supra*, slip opinion at 71, citing *Abbott II, supra*) and insurance of their provision through a comprehensive mandate for district-specific assessment, assistance and targeted intervention.¹

Moreover, as the ALJ and parties further recognize, the State has committed to development of a new funding formula and has now formally articulated, through the report of the Joint Legislative Committee on Public School Funding,² the foundational principles that should underlie such a formula regardless of its ultimate configuration. Review of these principles – substantially embodied in the Committee’s first five recommendations³ – shows them to be fully congruent with the State Board’s directive for abolishment of a “fragmented system” that meets the needs of some students while “not produc[ing] educational adequacy for all,” and replacement of it with a system that “ensures the provision of a constitutionally adequate education and equal educational opportunity for all students in New Jersey regardless of the district in which they live and

¹ Petitioners themselves recognize the congruence of the relief they are seeking and implementation of QSAC; see Petitioners’ Brief in Opposition to Motion to Dismiss at 5-7 and Petitioners’ Brief in Support of the ALJ’s Order at 2-3.

² Available online at http://www.njleg.state.nj.us/PropertyTaxSession/OPI/jcsf_Report111506.pdf. Recommendations at 63-77, and in the Executive Summary at 2-3.

³ The referenced recommendations read as follows:

- *Recommendation 1*: State aid for every school district should be based on the characteristics of the student population and the individual district’s ability to pay.
- *Recommendation 2*: Aid calculations should be simplified to ensure transparency, thereby eliminating the need for multiple additional aid categories.
- *Recommendation 3*: A new school aid formula should be developed based upon the nationally-recognized professional judgment panels (PJP) model for determining the resources necessary to meet educational standards.
- *Recommendation 4*: The formula should be based on “costing-out” calculations developed through the PJP model to determine the base per pupil cost of a thorough and efficient education, as well as the additional weights for special education, at-risk, and limited English proficiency students. This should also include use of the geographic cost of education index to accurately reflect differences in the cost-of-living throughout the State.
- *Recommendation 5*: A district’s share of State education funding should be based on up-to-date measures of a district’s ability to pay. The formula for calculating the ability to pay should be based equally on a district’s relative property wealth and income. Property wealth should be calculated by considering the equalized property valuation per capita relative to the State median. A district’s income should be calculated based upon income per capita relative to the State median.

the economic circumstances under which they were born.” (*Bacon, supra*, slip opinion at 65-66, 69)

The Commissioner thus finds that – taken together – these legislative enactments and their implementation by the Commissioner, State Board and local district boards of education will “effectuate the changes that are necessary to establish a unified system for public education that fulfills the constitutional mandate both with respect to the substantive education that must be provided and the resources necessary to support such a system.” (*Bacon, supra*, slip opinion at 72) Indeed, it is the fulfillment of this promise through coordinated action at all levels of government – not Commissioner rulings issued through a perpetual cycle of district-specific contested cases as would be enabled by petitioners’ and the ALJ’s reading of *Bacon* – that represents “the future course of education in this state, as envisaged in *Bacon*.”

Accordingly, for the reasons set forth above, the Commissioner rejects the Initial Order of the OAL and dismisses the Petition of Appeal for lack of a cognizable cause of action. Consistent with this holding, the Commissioner concurrently requests return of the file from the OAL pursuant to *N.J.A.C.* 1:1-3.3(a).

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: December 5, 2006

Date of Mailing: December 5, 2006

⁴ 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.*